

2005

STATE OF NEBRASKA

**STATUTES RELATING TO
LICENSES, PROFESSIONAL AND OCCUPATIONAL
(UNIFORM LICENSING LAW)**

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



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(a) DEFINITIONS

71-101. Law, how cited; terms, defined. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, 71-1301 to 71-1354, and 71-2801 to 71-2823 shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health pursuant to sections 71-111 and 71-112;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration; and

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug.

Source: Laws 1927, c. 167, §1, p. 454; C.S.1929, §71-101; R.S.1943, §71-101; Laws 1972, LB 1067, §1; Laws 1984, LB 481, §5; Laws 1986, LB 277, §2; Laws 1986, LB 286, §23; Laws 1986, LB 579, §15; Laws 1986, LB 926, §1; Laws 1986, LB 355, §8; Laws 1987, LB 473, §3; Laws 1988, LB 1100, §4; Laws 1988, LB 557, §12; Laws 1989, LB 344, §4; Laws 1989, LB 323, §2; Laws 1991, LB 456, §4; Laws 1993, LB 48, §1; Laws 1993, LB 187, §3; Laws 1993, LB 429, §1; Laws 1993, LB 536, §43; Laws 1993, LB 669, §2; Laws 1994, LB 900, §1; Laws 1994, LB 1210, §9; Laws 1994, LB 1223, §2; Laws 1995, LB 406, §10; Laws 1996, LB 1044, §371; Laws 1997, LB 622, §77; Laws 1999, LB 178, §1; Laws 1999, LB 366, §7; Laws 1999, LB 828, §7; Laws 2001, LB 25, §1; Laws 2001, LB 209, §1; Laws 2001, LB 270, §1; Laws 2001, LB 398, §19; Laws 2002, LB 1021, §4; Laws 2002, LB 1062, §11; Laws 2003, LB 242, §13; Laws 2004, LB 1005, §8; Laws 2004, LB 1083, §103; Laws 2005, LB 306, §1. Effective date September 4, 2005.

71-101.01. Healing art, defined. Whenever the term healing art or healing arts is used in any statute, unless such statute specifically designates otherwise, it shall be construed to refer exclusively to a health profession in which a licensed practitioner offers or undertakes to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity, or physical or mental condition. Nothing in this section shall be construed to enlarge the scope or definition for practice of any practitioner licensed in accordance with Chapter 71, article 1.

Source: Laws 1975, LB 92, §4.

71-101.02. Repealed. Laws 1988, LB 1100, §185.

(b) LICENSES AND CERTIFICATES

71-102. Practices; license or certificate required. (1) No person shall engage in the practice of medicine and surgery, athletic training, respiratory care, osteopathic medicine, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, massage therapy, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, veterinary medicine and surgery, medical nutrition therapy, acupuncture, mental health practice, or alcohol and drug counseling unless such person has obtained a license from the Department of Health and Human Services Regulation and Licensure for that purpose.

(2) No person shall hold himself or herself out as a certified social worker or certified master social worker unless such person has obtained a certificate from the department for that purpose.

(3) No person shall hold himself or herself out as a certified professional counselor unless such person has obtained a certificate from the department for such purpose.

(4) No person shall hold himself or herself out as a certified marriage and family therapist unless such person has obtained a certificate from the department for such purpose.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 579, § 16; Laws 1986, LB 355, § 9; Laws 1988, LB 1100, § 5; Laws 1988, LB 557, § 13; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104. Operative date July 1, 2004.

71-103. Licenses, certificates, and registrations; qualifications. No person shall be licensed, certified, or registered to practice a profession under the Uniform Licensing Law until he or she has furnished satisfactory evidence to the department that he or she has attained the age of majority and is of good moral character.

Source: Laws 1927, c. 167, §3, p. 455; C.S. 1929, §71-202; R.S. 1943, §71-103; Laws 1969, c. 560, §1, p. 2278; Laws 1974, LB 811, §6; Laws 1986, LB 286, §25; Laws 1986, LB 579, §17; Laws 1986, LB 926, §2; Laws 1994, LB 1210, §10. Operative date July 16, 1994.

71-104. License, certificate, or registration; grounds for refusal. The Department of Health and Human Services Regulation and Licensure may refuse to grant a license, certificate, or registration to practice a profession to any person, otherwise qualified, upon any of the grounds for which a license, certificate, or registration may be revoked under the provisions of the Uniform Licensing Law.

Source: Laws 1927, c. 167, §4, p. 455; C.S. 1929, §71-203; R.S. 1943, §71-104; Laws 1986, LB 286, §26; Laws 1986, LB 579, §18; Laws 1994, LB 1210, §11; Laws 1996, LB 1044, §373. Operative date January 1, 1997.

71-104.01. Criminal background check; when required. An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. The applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check. This section shall not apply to dentists who are applicants for temporary practice rights under subdivision (5) of section 71-183.01 or to physicians and surgeons who are applicants for temporary practice rights under subdivision (17) of section 71-1,103.

Source: Laws 2005, LB 306, §2; Laws 2005, LB 382, §15. Note: The changes made by LB 306 became effective September 4, 2005. The changes made by LB 382 became operative September 4, 2005.

71-105. Credential; form; how executed. Every credential to practice a profession shall be in the form of a document under the name and seal of the department and signed by the Director of Regulation and Licensure and the Governor. It shall also be countersigned by the members of the appropriate professional board, except that all credentials granted without examination may be issued by the department under its name and seal and signed by its director and the Governor. A copy of all credentials shall be retained in the department and given the same number as has been assigned to the credentialed person in the other records of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9. Effective date August 28, 1999.

71-106. License, certificate, or registration; right to practice; proof. Every license, certificate, or registration issued under the Uniform Licensing Law shall be presumptive evidence of the right of the holder to practice in this state the profession specified therein.

Source: Laws 1927, c. 167, §6, p. 455; C.S. 1929, §71-205; Laws 1943, c. 150, §1, p. 538; R.S. 1943, §71-106; Laws 1986, LB 286, §27; Laws 1986, LB 579, §19; Laws 1994, LB 1210, §13. Operative date July 16, 1994.

71-107. Credential; availability; use of terms. Every person credentialed under the Uniform Licensing Law to practice a profession shall keep the credential available in an office or place in which he or she practices and shall show such proof of credentialing upon request.

On all signs, announcements, stationery, and advertisements of persons credentialed to practice osteopathic medicine, chiropractic, podiatry, optometry, audiology, speech-language pathology, medical nutrition therapy, professional counseling, social work, marriage and family therapy, mental health practice, massage therapy, physical therapy, or alcohol and drug counseling shall be placed the word Osteopathic Physician, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Medical Nutrition Therapist, Professional Counselor, Social Worker, Master Social Worker, Marriage and Family Therapist, Mental Health Practitioner, Massage Therapist, Physical Therapist, or Alcohol and Drug Counselor, as the case may be.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp.,1941, § 71-206;

Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 1100, § 6; Laws 1988, LB 557, § 14; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws 2004, LB 1083, § 105. Operative date July 1, 2004.

71-108. Credential; registry record; contents; applications from other states; form. The name, date and place of birth, location or post office address, school and date of graduation, date of examination and ratings or grades received, and date of a credential if one is issued of all applicants for examination in the several professions regulated by the Uniform Licensing Law shall be entered in a record kept in the office of the department to be known as the registry record. A separate registry record shall be kept for each profession, the names of applicants in that profession shall be given consecutive numbers, and all other records relating to that application or the credential granted pursuant to that application shall be given the same number. A list shall also be kept of those granted credentials in the several professions. Applications for a credential shall be upon forms prepared by the department, and the completed applications shall be kept as a part of the permanent files of the department. If the applicant is an individual, the application shall include the applicant's social security number. All applications based on credentials granted in other states shall be received upon forms prepared by the department and entered in the registry records as nearly as may be in the same form as are those applying for examinations. In addition, the date of credentialing and the length of time of practice in the other state shall be given and entered. An applicant for credentialing in this state shall not be required to resubmit information previously submitted in connection with an application for credentialing made in this state or another jurisdiction unless requested by the department. The data in any or all of such records may be maintained in computer files, placed upon microfilm, or stored in a similar form. All such records, in whatever form, shall be available for public inspection, as defined by rules and regulations of the department. Investigational records, reports, and files pertaining to an application shall not be a public record until action is taken to grant or deny the application and may be withheld from disclosure thereafter under section 84-712.05. Social security numbers obtained under this section shall not be public information but may be shared by the department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

Source: Laws 1927, c. 167, § 8, p. 456; C.S.1929, § 71-207; R.S.1943, § 71-108; Laws 1979, LB 427, § 1; Laws 1986, LB 286, § 29; Laws 1986, LB 579, § 21; Laws 1986, LB 926, § 3; Laws 1987, LB 473, § 4; Laws 1991, LB 456, § 5; Laws 1994, LB 1210, § 15; Laws 1997, LB 752, § 156; Laws 1999, LB 828, § 11. Effective date August 28, 1999.

71-109. Repealed. Laws 2003, LB 242, § 154.

71-110. Credential; expiration date; renewal; reinstatement; fee; lapse; inactive status. (1) The credential to practice a profession shall be renewed biennially without examination upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 71-161.09 and 71-161.10. The biennial credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the designated professional board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows:

- (a) January, pharmacy and psychology;
- (b) February, funeral directing and embalming;
- (c) March, dentistry and dental hygiene;
- (d) April, podiatry and veterinary medicine and surgery;
- (e) May, athletic training and acupuncture;
- (f) June, respiratory care;
- (g) August, chiropractic and optometry;
- (h) September, alcohol and drug counseling, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;
- (i) October, medicine and surgery;
- (j) November, massage therapy and physical therapy; and
- (k) December, audiology and speech-language pathology.

The request for renewal need not be in any particular form and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as the act existed on January 1, 2002, persons credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a credentialed person and to practice the profession in which a license is required shall terminate. To restore the credential from lapsed to active status, such person shall be required to meet the requirements for initial credentialing which are in effect at the time that he or she wishes to restore the credential.

(3) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay the inactive status fee. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession. A credential may remain on inactive status for an indefinite period of time. In order to move a credential from inactive to active status, a person shall be required to meet the requirements for renewal which are in effect at the time he or she wishes to regain active status.

(4) At least thirty days before the expiration of a credential, the department shall notify each credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any credentialed person who fails to notify the department of his or her desire to let his or her credential lapse or be placed on inactive status upon its expiration or who fails to meet the requirements for renewal on or before the date of expiration of his or her credential shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to meet the requirements for renewal, (b) that the credential has expired, (c) that the person is subject to an administrative penalty under section 71-164.01 if he or she practices after the expiration date and prior to renewal of the credential, (d) that upon the receipt of the renewal fee and the required late fee within thirty days after the expiration date, no order of revocation will be entered, and (e) that upon the failure to comply with subdivision (d) of this subsection within such time, the credential will be revoked in the manner prescribed in section 71-149.

(5) Any credentialed person who desires to reinstate the credential not more than one year after the date of revocation for failure to meet the renewal requirements shall apply to the department for reinstatement. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

(6) Any credentialed person who desires to reinstate the credential more than one year after the date of revocation for failure to meet the renewal requirements shall petition the board to recommend reinstatement as prescribed in section 71-161.05. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S.1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004, LB 1083, § 106. Operative date July 1, 2004.

71-110.01. Credential; renewal; procedure; notice of expiration. (1) The department may provide for the renewal of a credential to engage in business as an apprentice training salon; a body art facility; a cosmetic establishment; a cosmetology salon; an electrology establishment; an emergency medical service; an emergency medical training program; an esthetics salon; a funeral establishment or branch establishment; a massage therapy establishment; a massage therapy school; a nail technology salon; a nail technology school; a satellite cosmetology classroom; a school of cosmetology; or a school of esthetics upon request of the credentialed entity as provided in this section. The credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the appropriate professional board, shall establish by rule and regulation. The request for renewal need not be in any particular form and shall be accompanied by the renewal fee, if applicable. Such fee shall be paid not later than the date of the expiration of such credential.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed entity by a letter addressed to the place of business as noted upon the department's records. Any credentialed entity which fails to pay the renewal fee on or before the date of expiration of the credential shall be given a second notice in the same manner as the first notice advising the entity (a) of the failure to pay the renewal fee, (b) that the credential has expired, (c) that the entity is subject to an administrative penalty under section 71-164.01 if the entity engages in business after the expiration date and prior to renewal, reinstatement, or issuance of a credential, (d) that upon the receipt of the renewal fee and the required late fee within thirty days after the expiration date, no order of revocation will be entered, and (e) that upon the failure to receive the fees, the credential will be revoked in the manner prescribed in section 71-149.

Source: Laws 2003, LB 242, § 15; Laws 2004, LB 906, § 1; Laws 2004, LB 1005, § 9. Note: The changes made by LB 906 became effective July 16, 2004. The changes made by LB 1005 became operative July 16, 2004.

(c) PROFESSIONAL BOARDS

71-111. Professional boards; appointment. The State Board of Health shall appoint members to the professional boards designated in section 71-112 for each of the professions under the Uniform Licensing Law.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981,

LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6. Operative date January 1, 2003.

71-112. Professional boards; designated; change in name; effect. (1) Professional boards under the Uniform Licensing Law shall be designated as follows:

- (a) For medicine and surgery, acupuncture, and osteopathic medicine and surgery, Board of Medicine and Surgery;
- (b) For athletic training, Board of Athletic Training;
- (c) For respiratory care, Board of Respiratory Care Practice;
- (d) For chiropractic, Board of Chiropractic;
- (e) For dentistry and dental hygiene, Board of Dentistry;
- (f) For optometry, Board of Optometry;
- (g) For massage therapy, Board of Massage Therapy;
- (h) For physical therapy, Board of Physical Therapy;
- (i) For pharmacy, Board of Pharmacy;
- (j) For audiology and speech-language pathology, Board of Audiology and Speech-Language Pathology;
- (k) For medical nutrition therapy, Board of Medical Nutrition Therapy;
- (l) For funeral directing and embalming, Board of Funeral Directing and Embalming;
- (m) For podiatry, Board of Podiatry;
- (n) For psychology, Board of Psychologists;
- (o) For veterinary medicine and surgery, Board of Veterinary Medicine and Surgery;
- (p) For mental health practice, Board of Mental Health Practice; and
- (q) For alcohol and drug counseling, Board of Alcohol and Drug Counseling.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp., 1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 579, § 24; Laws 1986, LB 355, § 11; Laws 1988, LB 1100, § 8; Laws 1988, LB 557, § 16; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107. Operative date July 1, 2004.

71-112.01. Board of Medicine and Surgery; responsibility. The Board of Medicine and Surgery shall be responsible for regulating the practices of osteopathic medicine and surgery and acupuncture in the same manner as such board regulates the practice of medicine and surgery.

Source: Laws 1981, LB 451, § 7; Laws 1989, LB 342, § 9; Laws 1999, LB 828, § 15; Laws 2001, LB 270, § 6. Effective date September 1, 2001.

71-112.02. Repealed. Laws 1990, LB 818, §1.

71-112.03. Professional boards; purpose. The purpose of each professional board is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that licensees or certificate holders serving the public meet minimum standards of proficiency and competency; and (3) control the profession in the interest of consumer protection.

Source: Laws 1982, LB 448, § 3; Laws 1987, LB 473, § 7; Laws 1999, LB 828, § 16. Effective date August 28, 1999.

71-112.04 to 71-112.06. Repealed. Laws 1987, LB 473, §63.

71-113. Professional boards; members; number. (1) Each professional board shall consist of four members, including one public member, except as otherwise provided in this section. A public member of a professional board (a) shall be a resident of this state who has attained the age of majority, (b) shall represent the interests and viewpoints of consumers, and (c) shall not be a present or former member of a credentialed profession, an employee of a member of a credentialed profession, or an immediate family or household member of any person presently regulated by such board.

(2)(a) In audiology and speech-language pathology the board shall consist of five members, including at least one public member, (b) in dentistry the board shall consist of ten members, including at least two public members, (c) in medicine and surgery the board shall consist of eight members, including at least two public members, (d) in pharmacy the board shall consist of five members, including at least one public member, (e) in psychology the board shall consist of seven members, including at least two public members, (f) in medical nutrition therapy the board shall consist of five members, including at least one public member, (g)

in mental health practice the board shall consist of not more than ten members, including at least two public members, (h) in alcohol and drug counseling the board shall consist of nine members, including two public members, and (i) boards with eleven or more members shall have at least three public members.

(3) Membership on the Board of Audiology and Speech-Language Pathology shall consist of two members who are audiologists, two members who are speech-language pathologists, and at least one public member.

(4) Membership on the Board of Athletic Training shall consist of three athletic trainers and at least one public member.

(5) Membership on the Board of Respiratory Care Practice shall consist of two respiratory care practitioners, one physician, and at least one public member.

(6) Two of the six professional members of the Board of Medicine and Surgery shall be officials or members of the instructional staff of an accredited medical school in this state.

(7) Two of the eight professional members of the Board of Dentistry shall be dentists who are officials or members of the instructional staff of an accredited school or college of dentistry in this state, and two of the members of the board shall be dental hygienists licensed under the Uniform Licensing Law.

(8) Membership on the Board of Medical Nutrition Therapy shall consist of two medical nutrition therapists, one physician, and at least one public member.

(9) Membership on the Board of Mental Health Practice shall consist of not more than two certified master social workers, not more than two certified professional counselors, not more than two certified marriage and family therapists, and at least two public members. At least one professional member of the board shall be a member of a racial or ethnic minority. When ten or more persons hold licenses as mental health practitioners without holding an associated certificate, not more than two such licensed mental health practitioners shall be added to the board.

(10) Membership on the Board of Alcohol and Drug Counseling shall consist of six alcohol and drug counselors three of whom may be licensed as psychologists or mental health practitioners and three of whom are not licensed as psychologists or mental health practitioners, one person who is a psychiatrist, psychologist, or mental health practitioner, and two public members.

Source: Laws 1927, c. 167, § 13, p. 457; C.S.1929, § 71-303; Laws 1943, c. 150, § 5, p. 540; R.S.1943, § 71-113; Laws 1963, c. 408, § 4, p. 1311; Laws 1971, LB 587, § 2; Laws 1978, LB 406, § 5; Laws 1979, LB 427, § 6; Laws 1980, LB 94, § 3; Laws 1983, LB 476, § 1; Laws 1984, LB 481, § 10; Laws 1985, LB 129, § 6; Laws 1986, LB 277, § 6; Laws 1986, LB 286, § 33; Laws 1986, LB 579, § 25; Laws 1986, LB 355, § 12; Laws 1987, LB 473, § 8; Laws 1988, LB 1100, § 9; Laws 1988, LB 557, § 17; Laws 1993, LB 669, § 7; Laws 1994, LB 1223, § 4; Laws 1995, LB 406, § 15; Laws 1999, LB 828, § 17; Laws 2004, LB 1083, § 108. Operative date July 1, 2004.

71-114. Professional boards; members; qualifications. (1) Except as provided in subsections (3) and (5) of this section, every professional member of a professional board shall be and have been actively engaged in the practice of his or her profession in the State of Nebraska, under a credential issued in this state, for a period of five years just preceding his or her appointment, except for the members of professional boards for professions coming within the scope of the Uniform Licensing Law for the first time and for a period of five years thereafter. Members appointed during such period shall be required to meet the minimum qualifications for credentialing in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) Each professional member of the Board of Audiology and Speech-Language Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to appointment and shall also have been engaged in rendering services to the public in audiology or speech-language pathology for at least three years immediately prior to appointment.

(3) The requirement of five years of experience shall apply to professional members of the Board of Psychologists, except that up to two of the five years may have been served in teaching or research.

(4) All professional members of professional boards appointed to an initial board shall be credentialed within six months after being appointed to the board or within six months after the date by which members of the profession are required to be credentialed, whichever is later. If for any reason a professional member is not credentialed within such time period, a new professional member shall be appointed.

(5) Each alcohol and drug counselor first appointed to the Board of Alcohol and Drug Counseling shall be a person who is a certified alcohol and drug abuse counselor on July 1, 2004, and who is and has been actively engaged in the practice of alcohol and drug counseling for at least two years immediately preceding his or her appointment to the board.

Source: Laws 1927, c. 167, § 14, p. 458; C.S.1929, § 71-304; Laws 1935, c. 142, § 31, p. 530; C.S.Supp.,1941, § 71-304; Laws 1943, c. 150, § 6, p. 540; R.S.1943, § 71-114; Laws 1957, c. 298, § 9, p. 1078; Laws 1978, LB 406, § 6; Laws 1979, LB 427, § 7; Laws 1984, LB 481, § 11; Laws 1985, LB 129, § 7; Laws 1986, LB 926, § 5; Laws 1987, LB 473, § 9; Laws 1988, LB 1100, § 10; Laws 1988, LB 557, § 18; Laws 1993, LB 669, § 8; Laws 1994, LB 1210, § 18; Laws 1995, LB 406, § 16; Laws 1999, LB 828, § 18; Laws 2004, LB 1083, § 109. Operative date July 1, 2004.

71-115. Repealed. Laws 1987, LB 473, §63.

71-115.01. Professional boards; conflict of interest. The department shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for members of the professional boards specified in section 71-112 and

which establish procedures in the case such a conflict arises.

Source: Laws 1982, LB 448, § 5; Laws 1987, LB 473, § 10; Laws 1999, LB 828, § 19. Effective date August 28, 1999.

71-115.02 to 71-115.04. Repealed. Laws 1987, LB 473, §63.

71-116. Professional boards; members; residency; appointment; term. (1) The members of each professional board shall be residents of the State of Nebraska and shall be appointed for terms of five years. No member shall be appointed for or serve for more than two consecutive full five-year terms.

(2) The members of the Board of Dentistry shall be appointed as follows: As of December 1, 1971, one member shall be appointed for a term of five years and one member shall be appointed for a term of three years; as of December 1, 1972, one member shall be appointed for a term of three years; as of December 1, 1973, one member shall be appointed for a term of three years; as of December 1 of each year thereafter, two members shall be appointed for terms of five years; as of December 1, 1979, one member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 shall be appointed for a term of five years; as of December 1, 1984, one public member shall be appointed for a term of five years; and as of December 1, 1994, a second member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 and a second public member shall be appointed for terms of five years. Thereafter successors with like qualifications shall be appointed for five-year terms.

(3) The members of the Board of Medicine and Surgery shall be appointed as follows: Within thirty days after May 25, 1943, five members shall be appointed, one of whom shall hold office until December 1, 1944, one until December 1, 1945, one until December 1, 1946, one until December 1, 1947, and one until December 1, 1948; upon the expiration of such terms, successors shall be appointed for terms of five years each. Within thirty days after October 19, 1963, a sixth member, who shall be a person eligible for appointment to the Board of Examiners in Osteopathy who also has a license to practice medicine and surgery in the State of Nebraska, shall be appointed for a term expiring on December 1, 1968. As of December 1, 1984, one public member shall be appointed for a term of five years, and as of December 1, 1994, a second public member shall be appointed for a term of five years. Thereafter successors with like qualifications shall be appointed for five-year terms. Upon the expiration of the five-year term of such sixth member of the board after April 19, 1986, his or her eligible successor shall be a person who has a license to practice osteopathic medicine or osteopathic medicine and surgery in the State of Nebraska.

(4) The members of the Board of Audiology and Speech-Language Pathology shall be appointed as follows: Within sixty days after July 22, 1978, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. As of December 1, 1984, one public member shall be appointed for a term of five years. Upon the expiration of such terms, the successors shall be appointed for terms of five years each.

(5) The Board of Pharmacy shall be composed of five members, including four actively practicing pharmacists, one of whom practices within the confines of a hospital, and a public member who is interested in the health of the people of Nebraska. The members of the Board of Pharmacy shall be appointed as follows: As of December 1, 1983, the hospital pharmacist member shall be appointed for a term of five years and the public member shall be appointed for a term of three years. Upon the expiration of such terms and the terms of existing members, the successors shall be appointed for terms of five years each.

(6) The members of the Board of Psychologists appointed as successors to the members serving on February 25, 1984, shall be appointed for terms of five years. The terms of members serving on February 25, 1984, are hereby extended to December 1 of the year in which they would otherwise expire.

(7) The three members serving on the Board of Examiners in Massage on August 1, 1988, shall be appointed as members of the Board of Massage Therapy. Successors shall be massage therapists and shall be appointed for terms of five years each. One public member shall be appointed on December 1, 1988, for a term of five years. Upon the expiration of the public member's term, each subsequent public member shall be appointed for a five-year term.

(8) The initial members of the Board of Mental Health Practice appointed from the Board of Examiners in Social Work and the Board of Examiners in Professional Counseling, as such boards existed immediately prior to September 1, 1994, shall serve until the expiration of the terms they would have served on their respective boards. One initial public member and one initial marriage and family therapist shall hold office until December 1 of the fourth year following September 1, 1994, and one initial public member and one initial marriage and family therapist shall hold office until December 1 of the fifth year following September 1, 1994.

(9) The initial members of the Board of Alcohol and Drug Counseling shall be appointed within ninety days after July 1, 2004, to hold office as follows: Of the six alcohol and drug counselors, one shall hold office until April 1, 2006, two until April 1, 2007, one until April 1, 2008, one until April 1, 2009, and one until April 1, 2010, as designated at the time of appointment; the person who is a psychiatrist, psychologist, or mental health practitioner shall hold office until April 1, 2008; and of the two public members, one shall hold office until April 1, 2009, and one until April 1, 2010, as designated at the time of appointment.

(10) Except as otherwise specifically provided, the term of each member provided for in this section shall commence on the first day of December following the expiration of the term of the member whom such person succeeds and shall be rotated in such a manner that no more than one professional member shall retire during any year in which a term expires unless the number of members on a board makes it impractical to do so.

(11) Except as otherwise specifically provided, the members of boards for professions coming under the scope of the Uniform

Licensing Law for the first time shall be appointed within thirty days after the effective or operative date, whichever is later, of the act providing for credentialing of the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the third year, one until December 1 of the fourth year, and two, including the public member, until December 1 of the fifth year following the year in which the act providing for credentialing of the profession became effective.

Source: Laws 1943, c. 150, § 8, p. 541; R.S.1943, § 71-116; Laws 1957, c. 298, § 10, p. 1079; Laws 1963, c. 408, § 5, p. 1311; Laws 1971, LB 587, § 4; Laws 1978, LB 406, § 7; Laws 1979, LB 297, § 3; Laws 1979, LB 428, § 2; Laws 1981, LB 451, § 4; Laws 1983, LB 476, § 2; Laws 1984, LB 481, § 12; Laws 1985, LB 129, § 8; Laws 1986, LB 286, § 34; Laws 1986, LB 579, § 26; Laws 1986, LB 926, § 7; Laws 1987, LB 473, § 11; Laws 1988, LB 1100, § 11; Laws 1993, LB 669, § 9; Laws 1994, LB 1210, § 19; Laws 1994, LB 1223, § 5; Laws 1999, LB 828, § 20; Laws 2004, LB 1083, § 110. Operative date July 1, 2004.

71-117. Professional member; state association or society recommendation; application. The regular state association or society, or its managing board, for each profession may submit each year to the State Board of Health a list of five persons of recognized ability in such profession who have the qualifications prescribed for professional members of the professional board for that particular profession. Each professional member of the Board of Pharmacy shall be the recipient of a diploma of graduation from an accredited school or college of pharmacy. If such a list is submitted, the State Board of Health shall consider the names on such list and may appoint one of the persons so named. Any person who desires to be considered for an appointment to a professional board and who possesses the necessary qualifications for such appointment may apply on a form provided by the State Board of Health any time prior to October 1 of each year. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the professional board, even though such person is not named on a list submitted by the association or society.

Source: Laws 1927, c. 167, § 17, p. 458; C.S.1929, § 71-307; Laws 1939, c. 91, § 3, p. 394; C.S.Supp., 1941, § 71-307; R.S.1943, § 71-117; Laws 1979, LB 427, § 8; Laws 1992, LB 860, § 1; Laws 1999, LB 828, § 21. Effective date August 28, 1999.

71-118. Professional board; member; removal; procedure; grounds. The State Board of Health shall have power to remove from office at any time any member of a professional board, after a public hearing pursuant to the provisions of the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a credential in the profession involved may be suspended or revoked under section 71-147 or 71-148, or for a lack of a credential in the profession involved.

Source: Laws 1927, c. 167, § 18, p. 458; C.S.1929, § 71-308; R.S.1943, § 71-118; Laws 1979, LB 427, § 9; Laws 1986, LB 286, § 35; Laws 1986, LB 579, § 27; Laws 1987, LB 473, § 12; Laws 1993, LB 187, § 6; Laws 1994, LB 1210, § 20; Laws 1999, LB 828, § 22. Effective date August 28, 1999.

71-119. Professional board; vacancy; how filled. Any vacancy in the membership of a professional board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 19, p. 458; C.S.1929, § 71-309; R.S.1943, § 71-119; Laws 1979, LB 427, § 10; Laws 1999, LB 828, § 23. Effective date August 28, 1999.

71-120. Professional board; organization. Each professional board shall organize annually at its first meeting subsequent to December 1 and shall select a chairperson, a vice-chairperson, and a secretary from its own membership.

Source: Laws 1927, c. 167, § 20, p. 459; C.S.1929, § 71-310; R.S.1943, § 71-120; Laws 1999, LB 828, § 24. Effective date August 28, 1999.

71-121. Professional board; business; how transacted. The department shall, as far as practicable, provide for the conducting of the business of the professional boards by mail and may hold meetings by teleconference subject to the Open Meetings Act. Any official action or vote of the members of a professional board taken by mail shall be preserved in the records of the department and shall be embodied in the proper minute book by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8; Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986, LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16. Effective date July 16, 2004.

71-121.01. Department; responsibilities; costs; how paid. The department shall be responsible for the general administration of the activities of each of the boards as defined in the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, and sections 71-4701 to 71-4719 and 71-6053 to 71-6068 and the boards covered by the scope of the

Uniform Licensing Law and named in section 71-102. The cost of operation and administration of the boards shall be paid from fees, gifts, grants, and other money credited to the Professional and Occupational Credentialing Cash Fund. The Director of Regulation and Licensure shall determine the proportionate share of this cost to be paid from the fees of the respective boards, except that no fees shall be paid for such purpose from the fund without the prior approval of the boards concerned. The director's determinations shall become final when approved by the respective boards and the department and shall be valid for one fiscal year only.

Source: Laws 1972, LB 1385, §3; Laws 1980, LB 958, §1; Laws 1980, LB 847, §1; Laws 1986, LB 926, §9; Laws 1991, LB 10, §1; Laws 1997, LB 307, §115; Laws 1999, LB 828, §26; Laws 2003, LB 242, §16; Laws 2005, LB 256, §20. Operative date July 1, 2007.

71-122. Professional board; compensation; exception; limitation. Each member of a professional board shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting the examination, and, with the exception of board members who are public members, for a reasonable number of days for the preparation of examination questions and the reading of the answer papers, in addition to the time actually spent in conducting the examination. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. The compensation per day shall not exceed thirty dollars and shall be determined by each board with the approval of the department, except that there shall not be paid for members' compensation and expenses a greater sum than is received in fees from the applicants for credentials in any particular profession.

Source: Laws 1927, c. 167, § 22, p. 459; Laws 1929, c. 161, § 1, p. 556; C.S.1929, § 71-312; Laws 1935, c. 142, § 32, p. 531; C.S.Supp.,1941, § 71-312; R.S.1943, § 71-122; Laws 1955, c. 270, § 1, p. 849; Laws 1957, c. 298, § 11, p. 1079; Laws 1959, c. 318, § 1, p. 1165; Laws 1961, c. 337, § 7, p. 1053; Laws 1965, c. 410, § 1, p. 1315; Laws 1967, c. 438, § 1, p. 1347; Laws 1967, c. 439, § 16, p. 1364; Laws 1969, c. 561, § 1, p. 2287; Laws 1971, LB 587, § 5; Laws 1972, LB 1385, § 1; Laws 1978, LB 406, § 9; Laws 1979, LB 427, § 12; Laws 1981, LB 451, § 5; Laws 1981, LB 204, § 108; Laws 1984, LB 481, § 13; Laws 1985, LB 129, § 10; Laws 1986, LB 926, § 10; Laws 1999, LB 828, § 27; Laws 2003, LB 242, § 17. Operative date July 1, 2004.

71-122.01. Repealed. Laws 1986, LB 926, §65.

71-123. Examinations; where conducted. Examinations for licensure in any of the professions may be held in any suitable area approved by the department upon recommendation of the appropriate professional board.

Source: Laws 1927, c. 167, § 23, p. 459; C.S.1929, § 71-313; R.S.1943, § 71-123; Laws 1969, c. 560, § 2, p. 2278; Laws 1986, LB 926, § 11; Laws 1999, LB 828, § 28. Effective date August 28, 1999.

71-124. Professional board; national organization meetings; attendance. Each professional board may select one or more of its members to attend the annual meeting of the national organization of state examining boards of such profession. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meeting on the same basis as provided in sections 81-1174 to 81-1177 if there are funds available belonging to that board.

Source: Laws 1927, c. 167, § 24, p. 460; C.S.1929, § 71-314; R.S.1943, § 71-124; Laws 1971, LB 587, § 7; Laws 1981, LB 204, § 110; Laws 1986, LB 926, § 12; Laws 1999, LB 828, § 29. Effective date August 28, 1999.

71-124.01. Inspector or investigator; appointment by department; approval of professional board. Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, the department may appoint a person who is actively engaged in such profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator with the consent and approval of the appropriate professional board when applicable, except that only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy as defined in subdivision (1) of section 71-1,142 shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the Board of Pharmacy.

Source: Laws 1953, c. 247, § 3, p. 850; Laws 1979, LB 427, § 13; Laws 1996, LB 1108, § 6; Laws 1999, LB 828, § 30. Effective date August 28, 1999.

(d) EXAMINATIONS

71-125. Examinations; application; fees. Any person desiring to take the examination for licensure or certification to practice a profession shall make application to the department or to the organization specified by the department prior to examination on a form provided by the department or such organization. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules and regulations of the department or such organization. When a national or standardized examination is required, the department may direct the applicant to apply directly to the

organization administering the examination to take the examination.

Source: Laws 1927, c. 167, §25, p. 460; C.S. 1929, §71-401; R.S. 1943, §71-125; Laws 1979, LB 427, §14; Laws 1986, LB 286, §36; Laws 1986, LB 579, §28; Laws 1986, LB 926, §13; Laws 1987, LB 473, §13; Laws 1990, LB 1064, §2; Laws 1991, LB 703, §13. Operative date September 6, 1991.

71-126. Repealed. Laws 1991, LB 703, §83.

71-127. Repealed. Laws 1986, LB 926, §65.

71-128. Examinations; eligibility of applicants; accredited colleges; national examination. The department shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by the Uniform Licensing Law. The appropriate professional board shall make recommendations relative thereto and shall approve the list for the profession for which it gives examinations. No school shall be accredited without the formal action of the department and the board. Any professional school or college whose graduates or students desire to take the Nebraska state board examination shall supply the department with the necessary data to allow the board and the department to determine whether that school should be accredited. The department may adopt any national examination to constitute part of or all of the licensure or certification examination for any of the professions which are regulated by the Uniform Licensing Law. Such examination shall be approved by the board as being a part of or all of the examination for licensure or certification.

Source: Laws 1927, c. 167, § 28, p. 461; C.S.1929, § 71-404; R.S.1943, § 71-128; Laws 1979, LB 427, § 15; Laws 1986, LB 286, § 37; Laws 1986, LB 579, § 29; Laws 1990, LB 1064, § 3; Laws 1999, LB 828, § 31. Effective date August 28, 1999.

71-129. Examinations; time and place. Examinations for licensure or certification shall be held on such dates and at such times and places as the department or the organization specified by the department may set. Such dates, times, and places as set by the department shall not exceed four in any one year except (1) as provided in section 71-133 for dentistry or (2) in those professions when nonpractical examinations are available for administration by either computers or in written form on a more frequent basis. Examinations may be held in any college or program or at any other location as determined by the department or the organization specified by the department. Any examination may be held concurrently in two or more places to accommodate the applicants therefor. Special examinations may be given at the expense of the applicant and administered by the department, the organization specified by the department, or the appropriate professional board.

Source: Laws 1927, c. 167, § 29, p. 461; C.S.1929, § 71-405; R.S.1943, § 71-129; Laws 1984, LB 470, § 3; Laws 1986, LB 926, § 14; Laws 1990, LB 1064, § 4; Laws 1996, LB 1108, § 7; Laws 1999, LB 828, § 32. Effective date August 28, 1999.

71-130. Repealed. Laws 1990, LB 1064, §33.

71-131. Examinations; grading; reexaminations. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The department may, upon the recommendation of the designated professional board, adopt and promulgate rules and regulations to specify the passing grade on licensure or certification examinations. In the absence of such rules and regulations, an examinee shall be required to obtain an average grade of seventy-five and shall be required to obtain a grade of sixty in each subject examined;

(b) A person who desires to take a licensure or certification examination but does not wish to receive a license or certification may take such examination by meeting the examination eligibility requirements and paying the cost of the examination; and

(c) An examinee who fails a licensure or certification examination may retake the entire examination or the part failed upon payment of the licensure or certification fee each time he or she is examined. The department shall withhold from the licensure or certification fee the cost of any national examination used when an examinee fails a licensure or certification examination and shall return to the examinee the remainder of the licensure or certification fee collected subject to section 71-162.05, except that:

(i) If the state-developed jurisprudence portion of the licensure or certification examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for purchasing such examination.

(2) In pharmacy, all applicants shall be required to attain a grade to be determined by the Board of Pharmacy in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

(3) In social work, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all the requirements for certification without examination pursuant to section 71-1,319 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) In professional counseling, the passing criterion for such examination shall be established and may be changed by the

Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(5) In marriage and family therapy, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 71-1,329 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(6) Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within seven years, except that if the applicant has been enrolled in a combined doctorate of medicine and doctorate of philosophy degree program in an accredited school or college of medicine, all parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

(7) In medical nutrition therapy, the passing criterion for such examination shall be established and may be changed by the Board of Medical Nutrition Therapy by rule and regulation. Such examination shall test for the essential clinical elements of the field of medical nutrition therapy. The board shall base all of its actions on broad categorical parameters derived from the essential elements of the field of medical nutrition therapy and shall not endorse nor restrict its assessment to any particular nutritional school of thought. The board may exempt an applicant from the written examination if he or she meets all of the requirements for licensure without examination pursuant to section 71-1,291 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(8) In alcohol and drug counseling, the Board of Alcohol and Drug Counseling shall approve a licensing examination and establish the passing criterion for such examination, which meets or exceeds the minimum international standards for alcohol and drug counselors established by the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor.

Source: Laws 1927, c. 167, § 31, p. 462; C.S.1929, § 71-407; Laws 1939, c. 91, § 4, p. 394; C.S.Supp., 1941, § 71-407; R.S.1943, § 71-131; Laws 1969, c. 560, § 3, p. 2279; Laws 1979, LB 427, § 16; Laws 1983, LB 476, § 4; Laws 1984, LB 481, § 14; Laws 1985, LB 250, § 1; Laws 1986, LB 277, § 7; Laws 1986, LB 286, § 38; Laws 1986, LB 579, § 30; Laws 1986, LB 926, § 16; Laws 1986, LB 355, § 13; Laws 1988, LB 1100, § 13; Laws 1988, LB 557, § 19; Laws 1989, LB 342, § 10; Laws 1990, LB 1064, § 5; Laws 1991, LB 703, § 14; Laws 1993, LB 669, § 10; Laws 1994, LB 1210, § 21; Laws 1995, LB 406, § 17; Laws 1999, LB 828, § 33; Laws 2002, LB 1021, § 8; Laws 2002, LB 1062, § 12; Laws 2003, LB 242, § 18; Laws 2004, LB 1083, § 111. Operative date July 1, 2004.

71-132. Examinations; identity of applicants; nondisclosure. All examinations in theory shall be in writing, and the identity of persons taking the same shall not be disclosed upon the examination paper in such a way as to enable the professional board to know by whom written. In examinations in practice, the identity of the candidate shall also be concealed as far as possible, and the board members shall in every way endeavor to carry out the spirit of this section.

Source: Laws 1927, c. 167, § 32, p. 462; C.S.1929, § 71-408; R.S.1943, § 71-132; Laws 1979, LB 427, § 17; Laws 1991, LB 703, § 15; Laws 1999, LB 828, § 34. Effective date August 28, 1999.

71-133. Examinations; oral or practical; how conducted. (1) The oral or practical work portion of any examination for licensure or certification under the Uniform Licensing Law shall be given by a majority of the members of the appropriate professional board except in dentistry. The oral examination questions shall be limited to the practice of the profession. The members of the board need not be present at the examination given to applicants when a national examination or any other written examination is utilized. Such board may delegate the administration of such examination to the department. The department may designate an organization to administer a national or written examination.

(2) In dentistry, the final practical examination in clinical dentistry may be given at each of the dental colleges, schools, or departments legally conducted in the State of Nebraska. The Central Regional Dental Testing Service practical examination or any other regional or state practical examination that the Board of Dentistry determines to be comparable to the Central Regional Dental Testing Service practical examination may be used to meet the requirement of a final practical examination for dentists and for dental hygienists. Any person who applies for a license to practice dentistry or dental hygiene who has failed on one occasion to pass the oral examination administered by the board shall be required to subsequently take and pass the practical examination before the department shall consider the applicant's qualifications for a license to practice dentistry or dental hygiene in the State of Nebraska. Any person who applies for a license to practice dentistry or dental hygiene who has failed on two occasions to pass any part of the examination shall be required to complete a course in clinical dentistry approved by the board before the department shall consider the results of a third examination as a valid qualification for a license to practice dentistry or dental hygiene in the State of Nebraska.

Source: Laws 1927, c. 167, § 33, p. 462; C.S.1929, § 71-409; R.S.1943, § 71-133; Laws 1979, LB 427, § 18; Laws 1982,

LB 449, § 1; Laws 1982, LB 450, § 1; Laws 1982, LB 448, § 1; Laws 1984, LB 470, § 4; Laws 1984, LB 481, § 15; Laws 1986, LB 286, § 39; Laws 1986, LB 579, § 31; Laws 1988, LB 1100, § 14; Laws 1989, LB 489, § 1; Laws 1990, LB 1064, § 6; Laws 1999, LB 828, § 35; Laws 2001, LB 209, § 2. Effective date February 14, 2001.

71-134 to 71-134.03. Repealed. Laws 1988, LB 1100, §185.

71-135 to 71-137. Repealed. Laws 1990, LB 1064, §33.

71-138. Examinations; question and answer sheets; maintained; inspection; limitation; department; powers and duties. (1) All question and answer sheets connected with any examination for licensure or certification shall be maintained by the department, national organization, or testing service for a period of two years from the date of administration of the examination. When national examinations that are governed by security considerations are utilized, they shall be available from the developing testing service for a period of two years, during which time such question and answer sheets shall be open to inspection by an applicant or his or her designee. Question and answer sheets for any national machine-graded or computer-scored examination which are protected by security agreements, copyright provisions, or departmental or state contractual agreements for use shall not be required to be on file with the department but shall be available for a period of two years, upon demand, from any testing service utilized, at the discretion of the department or upon order of a court of competent jurisdiction.

(2) The department, upon the recommendation of the professional board, may adopt and promulgate rules and regulations:

(a) To specify eligibility for taking the licensure or certification examination. In determining such eligibility, the department and the board shall consider the practices of other states and the promotion of reciprocal relations but shall determine such eligibility standards based on the extent to which completion of a course of study prior to examination is necessary to assure that applicants for licensure or certification meet minimum standards of proficiency and competency for the protection of the health and safety of the public;

(b) To specify licensure or certification examination application procedures, including the date, time, and place of examination and the deadline for making such application;

(c) To provide for the review of procedures for the development of examinations;

(d) To govern the administration of all or separate components of examinations for licensure or certification;

(e) To protect the security of the content of examination questions and answers; and

(f) To provide for the review of the examination question and answer sheets by examinees who fail the licensure or certification examinations or their designees.

The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from that service detailed documentation of the process of examination development and maintenance.

Source: Laws 1927, c. 167, § 38, p. 463; C.S.1929, § 71-414; R.S.1943, § 71-138; Laws 1969, c. 560, § 4, p. 2280; Laws 1978, LB 406, § 10; Laws 1979, LB 427, § 29; Laws 1986, LB 286, § 42; Laws 1986, LB 579, § 34; Laws 1986, LB 926, § 22; Laws 1987, LB 473, § 14; Laws 1990, LB 1064, § 7; Laws 1991, LB 703, § 16; Laws 1999, LB 828, § 36. Effective date August 28, 1999.

(e) RECIPROCAL LICENSES AND CERTIFICATES

71-139. Reciprocal licenses, certificates, or registrations; in general; credentials required. (1) The department may, without examination, except when a practical examination is required, issue a license to practice any profession, except pharmacy, podiatry, dentistry, medicine and surgery, optometry, osteopathic medicine and surgery or as an osteopathic physician, and audiology and speech-language pathology, to a person who has been in the active practice of such profession in another state or territory of the United States or the District of Columbia upon (a) certification by the proper licensing authority of the state, territory, or District of Columbia that (i) the applicant is duly licensed, (ii) his or her license has never been suspended or revoked, and (iii) so far as the records of such authority are concerned, the applicant is entitled to its endorsement and (b) proof of the following:

(i) That the state, territory, or District of Columbia has and maintains standards regulating such profession equal to those maintained in this state;

(ii) That his or her license was based upon a written examination and the grades given at such examination;

(iii) The date of his or her license;

(iv) That he or she has been actively engaged in the practice of such profession under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity;

(v) That the applicant is of good moral character and standing in his or her profession as evidenced by completing under oath an application from the department containing such a statement; and

(vi) That the applicant has been in the active and continuous practice of such profession under license by examination in such state, territory, or District of Columbia for at least one year.

(2) An applicant for reciprocal registration coming from any state may be licensed by reciprocity if his or her individual qualifications meet the Nebraska legal requirements.

(3) The department may issue certificates or registrations on a reciprocal basis to persons who are required to be certified or registered pursuant to the Uniform Licensing Law. The department may adopt and promulgate rules and regulations for reciprocity pursuant to this section.

(4) Persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Examiners in Osteopathy since January 1, 1963, and prior to May 23, 1981, and after May 23, 1981, persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Medicine and Surgery who meet the requirements of this section and who have passed a written examination which is equivalent to that required in section 71-1,104 as determined by the Board of Medicine and Surgery and who meet the requirements of section 71-1,137 for the practice of osteopathic medicine and surgery as evidenced by a certificate of the Board of Medicine and Surgery may be granted a license to practice osteopathic medicine and surgery as defined in section 71-1,137 if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. Graduates of an accredited school or college of osteopathic medicine since January 1, 1963, who meet the requirements of this section and who meet the applicable requirements of section 71-1,139.01 as certified by the Board of Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

(5) The department may approve without examination any person who has been duly licensed to practice optometry in another state or territory of the United States or the District of Columbia under conditions and circumstances which the Board of Optometry shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice optometry if such person has been actively engaged in the practice under such license for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training. The applicant shall provide certification from the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found to meet the requirements provided in this section and is qualified to be licensed to practice the profession of optometry in the State of Nebraska, the board shall issue a license to practice optometry in the State of Nebraska to such applicant.

(6) The Board of Dentistry may approve any person who has been duly licensed to practice dentistry or dental hygiene in another state or territory of the United States or the District of Columbia under conditions and circumstances which the board finds to be comparable to the requirements of the State of Nebraska for obtaining a license to practice dentistry or dental hygiene if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least three years, one of which shall be within the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall provide certification from the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. The applicant shall submit evidence of completion during the twelve-month period preceding the application of continuing competency requirements comparable to the requirements of this state. The board may administer an oral examination to all applicants for licensure by reciprocity to assess their knowledge of basic clinical aspects of dentistry or dental hygiene. If the applicant is found by the board to meet the requirements provided in this section, the board shall certify such fact to the department, and the department upon receipt of such certification shall issue a license to practice dentistry or dental hygiene in the State of Nebraska to such applicant. If the board finds that the applicant does not satisfy the requirements of this section, the board shall certify its findings to the department. The Director of Regulation and Licensure shall review the findings, and if he or she agrees with the findings, the director shall deny the application.

Source: Laws 1927, c. 167, § 39, p. 463; C.S.1929, § 71-501; Laws 1931, c. 124, § 1, p. 358; Laws 1933, c. 122, § 2, p. 493; Laws 1939, c. 91, § 5, p. 395; C.S.Supp.,1941, § 71-501; R.S.1943, § 71-139; Laws 1965, c. 411, § 1, p. 1316; Laws 1967, c. 438, § 2, p. 1348; Laws 1972, LB 1498, § 1; Laws 1974, LB 811, § 7; Laws 1978, LB 406, § 11; Laws 1981, LB 451, § 6; Laws 1984, LB 481, § 16; Laws 1985, LB 129, § 11; Laws 1985, LB 250, § 3; Laws 1986, LB 286, § 43; Laws 1986, LB 579, § 35; Laws 1986, LB 926, § 23; Laws 1989, LB 342, § 11; Laws 1994, LB 1210, § 22; Laws 1996, LB 1044, § 375; Laws 1999, LB 828, § 37; Laws 2002, LB 1021, § 9. Operative date January 1, 2003.

71-139.01. Reciprocal licenses; medicine and surgery; credentials required. (1) The Board of Medicine and Surgery may approve without examination:

(a) Any person who after examination has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the board finds to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery;

(b) Any person who is a graduate of an accredited college or school of medicine and surgery located in the Canadian provinces and who has satisfactorily completed the Licentiate of the Medical Council of Canada examination and has been duly licensed to practice medicine and surgery in Canada under conditions and circumstances which the board finds to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery; or

(c) Any person who is a foreign medical graduate and who has not graduated from an accredited school or college of medicine of the United States or Canada but who has satisfactorily completed the Licentiate of the Medical Council of Canada examination and who possesses a certificate issued by the Educational Commission on Foreign Medical Graduates, or its equivalent as provided for in section 71-1,104, and has been duly licensed to practice in Canada under conditions and circumstances which the board finds to be comparable to the requirements of the State of Nebraska for obtaining a license to practice medicine and surgery.

(2) The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska.

The applicant shall also produce evidence satisfactory to the board that he or she has met the requirements of subdivision (1)(d) of section 71-1,104 and shall submit a certificate of the proper licensing authority of the state, the territory, the District of Columbia, or Canada where he or she is licensed to practice such profession, that the applicant is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned, the applicant is entitled to its endorsement.

(3) If the applicant is found by the board to meet the requirements provided in this section and to be qualified to be licensed to practice the profession of medicine and surgery in the State of Nebraska, the board shall certify such fact to the department and the department upon receipt of such certification shall issue a license to practice medicine and surgery in the State of Nebraska to such applicant.

Source: Laws 1965, c. 411, § 2, p. 1317; Laws 1969, c. 560, § 5, p. 2280; Laws 1974, LB 811, § 8; Laws 1979, LB 34, § 1; Laws 1984, LB 481, § 17; Laws 1988, LB 1100, § 15; Laws 1999, LB 828, § 38; Laws 2002, LB 1062, § 13. Operative date July 20, 2002.

71-139.02. Reciprocal license or certificate; mental health practice professionals; alcohol and drug counselors; requirements. When issuing, without examination, a license as a psychologist, mental health practitioner, or alcohol and drug counselor or a certification in social work, professional counseling, or marriage and family therapy pursuant to section 71-139, the department may issue such license or certification regardless of the title used by the other state, the territory, or the District of Columbia if the applicant provides satisfactory evidence that the requirements for licensure or certification meet or exceed those required by this state.

Source: Laws 1993, LB 669, § 11; Laws 1994, LB 1210, § 23; Laws 2004, LB 1083, § 112. Operative date July 1, 2004.

71-140. Reciprocal licenses; pharmacy; credentials required. The Board of Pharmacy may recommend to the department the licensure as a pharmacist, without examination, of any person who is duly so licensed by examination in some other state or jurisdiction in which, under like conditions, reciprocal licensure as a pharmacist, without examination, is granted to pharmacists duly licensed by examination in this state. The applicant shall produce evidence satisfactory to the board of having had the required secondary and professional education and training, of having been a licensed pharmacist in good standing in another state or jurisdiction, and of having good character and morals, as demanded of applicants for licensure under sections 71-1,142 to 71-1,147. Persons of good character who have become licensed or registered as pharmacists by examination in other states prior to September 1, 1939, shall be required to meet only the requirements which existed in this state at the time when they became licensed or registered in such other state.

Source: Laws 1939, c. 91, § 5, p. 395; C.S.Supp., 1941, § 71-501; R.S. 1943, § 71-140; Laws 1983, LB 476, § 5; Laws 1984, LB 481, § 18; Laws 1987, LB 21, § 1; Laws 1996, LB 1044, § 376; Laws 1999, LB 828, § 39; Laws 2003, LB 667, § 3. Effective date August 31, 2003.

71-141. Reciprocal licenses or certificates; standards of other states; how ascertained. In order that the department may determine the standards established by law and by rule in the other states, the Director of Regulation and Licensure, or some other person authorized by the director, shall gather information from other states bearing upon this point. The applicant shall, upon the request of the department, be responsible for securing information from the proper authority of the place from which he or she comes, of the standards maintained there, and the laws and rules relating thereto. In determining these standards, the department shall submit to the appropriate professional board any question that requires the exercise of expert knowledge.

Source: Laws 1927, c. 167, § 40, p. 464; C.S. 1929, § 71-502; R.S. 1943, § 71-141; Laws 1996, LB 1044, § 377; Laws 1997, LB 307, § 116; Laws 1999, LB 828, § 40. Effective date August 28, 1999.

71-142. Reciprocal licenses or certificates; retaliatory refusal of admission; power of department. Where the licensing authority in any other state shall refuse to accept applicants from Nebraska who are qualified to be admitted under the laws of that state, and have been properly certified by the Department of Health and Human Services Regulation and Licensure of this state, then the department may decline to admit without examination licensees from that state.

Source: Laws 1927, c. 167, §41, p. 465; C.S. 1929, §71-503; R.S. 1943, §71-142; Laws 1996, LB 1044, §378. Operative date January 1, 1997.

71-143. Reciprocal licenses or certificates; practical work; special examinations. In those professions requiring a practical examination in connection with the admission of applicants from other states without general examination, if the appropriate professional board is not expected to be in session within thirty days, the department may ask at least one-third of that board to give a special examination and may fix reasonable compensation therefor in addition to traveling expenses.

Source: Laws 1927, c. 167, § 42, p. 465; C.S.1929, § 71-504; R.S.1943, § 71-143; Laws 1996, LB 1044, § 379; Laws 1999, LB 828, § 41. Effective date August 28, 1999.

71-144. Reciprocal licenses or certificates; rules; power of department. The department, with the consent of the appropriate professional board, shall have power to establish the necessary rules, not inconsistent with the law, to carry out the reciprocal relations with other states which are authorized in the Uniform Licensing Law.

Source: Laws 1927, c. 167, § 43, p. 465; C.S.1929, § 71-505; R.S.1943, § 71-144; Laws 1996, LB 1044, § 380; Laws 1999, LB 828, § 42. Effective date August 28, 1999.

71-145. Certification and verification of credentials. (1) Upon request and payment of the required fee, the department shall provide certification of a credential which shall include a certified statement that provides information regarding the basis on which a credential was issued, the date of issuance, and whether disciplinary action has been taken against the credential. The certification shall be issued under the name and seal of the department.

(2) Upon request and payment of the required fee, the department shall provide verification of a credential which shall include written confirmation as to whether a credential is valid at the time the request is made.

Source: Laws 1927, c. 167, § 44, p. 465; C.S.1929, § 71-506; R.S.1943, § 71-145; Laws 1986, LB 286, § 44; Laws 1986, LB 579, § 36; Laws 1994, LB 1210, § 24; Laws 1996, LB 1044, § 381; Laws 2003, LB 242, § 19. Operative date July 1, 2004.

71-146. Repealed. Laws 1980, LB 94, §19.

(f) REVOCATION OF LICENSES AND CERTIFICATES

71-147. License, certificate, or registration to practice a profession; disciplinary actions; grounds. A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, certificate holder, or registrant is guilty of any of the following acts or offenses:

(1) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license, certificate, or registration;

(2) Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;

(3) Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to section 71-172.01;

(4) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession;

(5) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct shall mean a continued course of negligent conduct in performing the duties of the profession;

(6) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;

(7) Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;

(8) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate, or registration by a person not licensed, certified, or registered to do so;

(9) Having had his or her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had such license, certificate, or registration disciplined in any other manner in accordance with section 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence;

(10) Unprofessional conduct;

(11) Use of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims, concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements;

(12) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(13) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(14) Willful or repeated violations of the Uniform Licensing Law or the rules and regulations of the department relating to the licensee's, certificate holder's, or registrant's profession, sanitation, quarantine, or school inspection;

(15) Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice;

(16) Failure to comply with sections 71-603.01, 71-604, 71-605, and 71-606 relating to the signing of birth and death certificates;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;

(19) Violation of the Emergency Box Drug Act;

(20) Failure to file a report required by section 71-168;

(21) Failure to disclose the information required by section 71-1,314.01;

(22) Failure to disclose the information required by section 71-1,319.01; or

(23) Failure to disclose the information required by section 71-1,206.34.

A license, certificate, or registration to practice a profession may also be refused renewal or revoked when the licensee, certificate holder, or registrant is guilty of practicing such profession while his or her license, certificate, or registration to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his or her license, certificate, or registration.

This section shall not apply to revocation for nonrenewal as set out in subsection (1) of section 71-149 and sections 71-110 and 71-161.10.

Source: Laws 1927, c. 167, §46, p. 466; C.S.1929, §71-601; Laws 1943, c. 150, §10, p. 541; R.S.1943, §71-147; Laws 1976, LB 877, §1; Laws 1979, LB 95, §1; Laws 1986, LB 286, §45; Laws 1986, LB 579, §37; Laws 1986, LB 926, §24; Laws 1987, LB 473, §15; Laws 1988, LB 1100, §16; Laws 1991, LB 456, §7; Laws 1992, LB 1019, §37; Laws 1993, LB 536, §44; Laws 1994, LB 1210, §25; Laws 1994, LB 1223, §6; Laws 1997, LB 622, §79; Laws 1999, LB 366, §8; Laws 2001, LB 398, §20; Laws 2005, LB 301, §9. Operative date September 4, 2005.

71-147.01. Peer review committee; health practitioners; slander, libel, defamation of character, privileged communication, or other actions; exempt; when. No member of a peer review committee of a state or local association or society composed of health practitioners licensed pursuant to the provisions of Chapter 71, article 1, shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, §1.

71-147.02. License, certificate, or registration; temporary suspension or limitation; notice and hearing not required; when; duration. The department may temporarily suspend or temporarily limit the license of any licensee, the certificate of any certificate holder, or the registration of any registrant without notice or a hearing if the director determines that there is reasonable cause to believe that grounds exist under section 71-147 for the revocation, suspension, or limitation of the license, certificate, or registration and that the licensee's, certificate holder's, or registrant's continuation in practice would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the license, certificate, or registration. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or temporary limitation of the license, certificate, or registration.

A continuance of the hearing shall be granted by the department upon the written request of the licensee, certificate holder, or registrant, and such a continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director shall take effect when served upon the licensee, certificate holder, or registrant.

In no case shall a temporary suspension or temporary limitation of a license, certificate, or registration under this section be in effect for a period of time in excess of ninety days. If a decision is not reached within ninety days, the licensee, certificate holder, or registrant shall be reinstated to full licensure, certification, or registration unless and until the department reaches a decision to revoke, suspend, or limit the license, certificate, or registration or otherwise discipline the licensee, certificate holder, or registrant.

Source: Laws 1986, LB 926, §26; Laws 1991, LB 456, §10; Laws 1994, LB 1210, §26. Operative date July 16, 1994.

71-148. License, certificate, or registration to practice a profession; revocation or suspension; unprofessional conduct, defined. For purposes of section 71-147, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or occupation or the ethics of the profession or occupation, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

- (1) Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee, certificate holder, or registrant;
- (2) Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;
- (3) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient;
- (4) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
- (5) Cheating on or attempting to subvert the licensing or certification examination;
- (6) Assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative;
- (7) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which he or she is not licensed, certified, or registered;
- (8) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
- (9) Willful betrayal of a professional secret except as otherwise provided by law;
- (10) Making use of any advertising statements of a character tending to deceive or mislead the public;
- (11) Advertising professional superiority or the performance of professional services in a superior manner;
- (12) Advertising to guarantee any professional service or to perform any operations painlessly;
- (13) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;
- (14) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908;
- (15) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (9) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;
- (16) The providing by a massage therapist of sexual stimulation as part of massage therapy;
- (17) Violating an assurance of compliance entered into under section 71-171.02;
- (18) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession or occupation of the applicant, licensee, certificate holder, or registrant;
- (19) Failure to keep and maintain adequate records of treatment or service;
- (20) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
- (21) Prescribing any controlled substance to oneself or, except in the case of a medical emergency, to one's spouse or child; and
- (22) Such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the applicant, licensee, certificate holder, or registrant with the approval of the department.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, §47, p. 466; C.S. 1929, §71-602; Laws 1935, c. 141, §1, p. 518; C.S. Supp., 1941, §71-602; Laws 1943, c. 146, §11, p. 542; R.S. 1943, §71-148; Laws 1979, LB 95, §2; Laws 1981, LB 466, §1; Laws 1986, LB 286, §46; Laws 1986, LB 579, §38; Laws 1986, LB 926, §25; Laws 1987, LB 473, §16; Laws 1988, LB 273, §9; Laws 1988, LB 1100, §17; Laws 1991, LB 425, §11; Laws 1991, LB 456, §11; Laws 1993, LB 536, §45; Laws 1994, LB 1210, §27; Laws 1997, LB 23, §5. Effective date June 10, 1997.

71-149. Credential; failure to pay fees; failure to meet continuing competency requirement; effect. (1) The department shall automatically revoke, without further notice or hearing, the credential of any person who fails, within thirty days after the expiration of such credential, to pay the required renewal fee, to submit documentation of continuing competency, or to pay the required late fee, and the department shall make proper record of such revocation.

(2) The department shall revoke, after notice and opportunity for hearing, the credential of any person who fails, within thirty days after expiration of such credential, to meet the applicable continuing competency requirement for renewal.

(3) Subsections (1) and (2) of this section shall not apply when the credentialed person has given notification to the department that he or she desires to have his or her credential lapse or be placed on inactive status upon expiration and, for placement on inactive status, has paid the inactive status fee.

Source: Laws 1927, c. 167, § 48, p. 467; C.S. 1929, § 71-603; Laws 1943, c. 150, § 12, p. 543; R.S. 1943, § 71-149; Laws 1976, LB 877, § 2; Laws 1984, LB 481, § 19; Laws 1986, LB 286, § 47; Laws 1986, LB 579, § 39; Laws 1987, LB 473, § 17; Laws 1988, LB 1100, § 18; Laws 1994, LB 1210, § 28; Laws 2002, LB 1021, § 10; Laws 2003, LB 242, § 20. Operative date July 1, 2004.

71-150. License, certificate, or registration; director; jurisdiction; denial; refuse renewal; discipline; procedure.

(1) The Director of Regulation and Licensure shall have jurisdiction of proceedings (a) to deny the issuance of a license, certificate, or registration, (b) to refuse renewal of a license, certificate, or registration, and (c) to discipline a licensee, certificate holder, or registrant.

(2) To deny or refuse renewal of a license, certificate, or registration, the department shall send the applicant, licensee, certificate holder, or registrant, by registered or certified mail, notice setting forth the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant, licensee, certificate holder, or registrant, within such thirty-day period, gives written notice of his or her desire for a hearing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

(3) In order for the director to discipline a licensee, certificate holder, or registrant, a petition shall be filed by the Attorney General in all cases. The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

Source: Laws 1927, c. 167, §49, p. 467; C.S. 1929, §71-604; R.S. 1943, §71-150; Laws 1986, LB 286, §48; Laws 1986, LB 579, §40; Laws 1988, LB 1100, §19; Laws 1991, LB 456, §12; Laws 1994, LB 1210, §29; Laws 1996, LB 1044, §382. Operative date January 1, 1997.

71-151. License, certificate, or registration; revocation or suspension; duties of Attorney General and county attorney. The Attorney General shall comply with such directions of the Department of Health and Human Services Regulation and Licensure or of the Director of Regulation and Licensure and prosecute such action on behalf of the state, but the county attorney of any county where a licensee, certificate holder, or registrant has practiced, at the request of the Attorney General or of the department, shall appear and prosecute such action.

Source: Laws 1927, c. 167, §50, p. 467; C.S. 1929, §71-605; R.S. 1943, §71-151; Laws 1986, LB 286, §49; Laws 1986, LB 579, §41; Laws 1994, LB 1210, §30; Laws 1997, LB 307, §117. Operative date July 1, 1997.

71-152. License, certificate, or registration; revocation or suspension; petition; form; other pleadings. The following rules shall govern the form of the petition in cases brought pursuant to section 71-150:

(1) The state shall be named as plaintiff and the licensee, certificate holder, or registrant as defendant;

(2) The charges against the licensee, certificate holder, or registrant shall be stated with reasonable definiteness;

(3) Amendments may be made as in ordinary actions in the district court; and

(4) All allegations shall be deemed denied, but the licensee, certificate holder, or registrant may plead thereto if he or she desires.

Source: Laws 1927, c. 167, §51, p. 467; C.S. 1929, §71-606; R.S. 1943, §71-152; Laws 1986, LB 286, §50; Laws 1986, LB 579, §42; Laws 1994, LB 1210, §31. Operative date July 16, 1994.

71-153. License certificate, or registration; discipline; hearing; time; place. Upon the presentation of the petition to the Director of Regulation and Licensure, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, §52, p. 468; C.S. 1929, §71-607; R.S. 1943, §71-153; Laws 1986, LB 926, §27; Laws 1996, LB 1044, §383. Operative date January 1, 1997.

71-154. License, certificate, or registration; revocation or suspension; hearing; notice; how served. Notice of the filing of a petition pursuant to section 71-150 and of the time and place of hearing shall be served upon the licensee, certificate holder, or registrant at least ten days before the hearing. The notice may be served by any method specified in section 25-505.01, or the director may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Source: Laws 1927, c. 167, §53, p. 468; C.S. 1929, §71-608; R.S. 1943, §71-154; Laws 1986, LB 286, §51; Laws 1986, LB 579, §43; Laws 1991, LB 456, §13; Laws 1994, LB 1210, §32. Operative date July 16, 1994.

71-155. Credential; disciplinary action; proceedings; hearing; how conducted; Director of Regulation and Licensure; powers; order; effect. (1) The proceeding under section 71-150 shall be summary in its nature and triable as an equity action and shall be heard by the Director of Regulation and Licensure or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance,

and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held under this section, the director shall, if the petition is brought with respect to subdivision (15) of section 71-148, make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, and shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

- (a) Issue a censure against the credentialed person;
- (b) Place the credentialed person on probation;
- (c) Place a limitation or limitations on the credential and upon the right of the credentialed person to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper;
- (d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the penalty shall be based on the severity of the violation;
- (e) Enter an order of suspension of the credential;
- (f) Enter an order of revocation of the credential; and
- (g) Dismiss the action.

(2) If the director determines that guilt has been established, the director may, at his or her discretion, consult with the professional board for the profession involved concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a professional board, the credentialed person shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines.

(3) The credentialed person shall not engage in the practice of a profession after a credential to practice such profession is revoked or during the time for which it is suspended. If a credential is suspended, the suspension shall be for a definite period of time to be set by the director. The director may provide that the credential shall be automatically reinstated upon expiration of such period, reinstated if the terms and conditions as set by the director are satisfied, or reinstated subject to probation or limitations or conditions upon the practice of the credentialed person. If such credential is revoked, such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 71-161.04.

Source: Laws 1927, c. 167, § 54, p. 468; C.S. 1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S. 1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43. Effective date August 28, 1999.

71-155.01. Contested cases; chief medical officer; duties. If a chief medical officer is appointed pursuant to section 81-3201, he or she shall perform the duties of the Director of Regulation and Licensure for decisions in contested cases under sections 71-150, 71-153 to 71-155, 71-156, 71-161.02, 71-161.03, 71-161.07, 71-161.11 to 71-161.15, 71-161.17, 71-161.18, 71-161.20, 71-1,104, 71-1,142, 71-1,147.31, 71-1,147.44, and 71-1,147.45.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11. Operative date January 1, 2004.

71-155.02. Repealed. Laws 1988, LB 1100, § 185.

71-155.03. Civil penalty; manner of collection. Any civil penalty assessed and unpaid under section 71-155 shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, transmit any collected civil penalty to the State Treasurer for deposit in the Permanent School Fund.

Source: Laws 1986, LB 926, § 29. Effective date April 19, 1986.

71-156. License, certificate, or registration; revocation, suspension, or other disciplinary action; hearing; failure to appear; effect. In case the licensee, certificate holder, or registrant fails to appear, either in person or by counsel at the time and place designated in the notice required by section 71-154, the Director of Regulation and Licensure after receiving satisfactory evidence of the truth of the charges shall order the license, certificate, or registration revoked or suspended or shall order any or all of the other appropriate disciplinary measures authorized by section 71-155 to be taken against the licensee, certificate holder, or registrant.

Source: Laws 1927, c. 167, § 55, p. 468; C.S. 1929, § 71-610; R.S. 1943, § 71-156; Laws 1976, LB 877, § 4; Laws 1986, LB 286, § 54; Laws 1986, LB 579, § 46; Laws 1994, LB 1210, § 34; Laws 1996, LB 1044, § 385. Operative date January 1, 1997.

71-157. Costs; how taxed. If the order issued pursuant to section 71-156 is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the state is the unsuccessful party, the costs shall be paid out of any money in the Professional and Occupational Credentialing Cash Fund available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Source: Laws 1927, c. 167, § 56, p. 468; C.S.1929, § 71-611; R.S.1943, § 71-157; Laws 1986, LB 286, § 55; Laws 1986, LB 579, § 47; Laws 1994, LB 1210, § 35; Laws 1996, LB 1044, § 386; Laws 1997, LB 307, § 118; Laws 2003, LB 242, § 21. Operative date July 1, 2004.

71-158. Costs; when not collectible; how paid. All costs accrued at the instance of the state when it is the successful party, which the Attorney General certifies cannot be collected from the defendant, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 57, p. 468; C.S.1929, § 71-612; R.S.1943, § 71-158; Laws 1996, LB 1044, § 387; Laws 1997, LB 307, § 119; Laws 2003, LB 242, § 22. Operative date July 1, 2004.

71-159. Appeal; procedure. Both parties shall have the right of appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1927, c. 167, §58, p. 469; C.S. 1929, §71-613; Laws 1943, c. 150, §14, p. 544; R.S. 1943, §71-159; Laws 1976, LB 877, §5; Laws 1988, LB 352, §113. Operative date July 1, 1989.

71-160. Licenses; revocation or suspension; appeal; hearing; time. The cause shall be heard at a time fixed by the district court. It shall be advanced and take precedence over all other cases upon the court calendar except compensation and criminal cases.

Source: Laws 1927, c. 167, §59, p. 469; C.S. 1929, §71-614; Laws 1943, c. 150, §15, p. 545.

71-161. Repealed. Laws 1988, LB 352, §190.

71-161.01. Conviction, what constitutes; defined; disciplinary measures; when effective. A plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge shall be deemed to be a conviction within the meaning of sections 28-409, 71-147, 71-3,174, 71-3,175, and 71-2041.02. The term conviction within the meaning of such sections shall mean a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof and shall include instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation. Pursuant to such sections, a license, permit, certificate, or registration, including one of a temporary nature, may be denied, refused renewal, limited, suspended, or revoked or have other disciplinary measures taken against it in accordance with section 71-155 when the time for appeal of the conviction has elapsed or the conviction has been affirmed on appeal or an order granting probation is made suspending the imposition or the execution of sentence, irrespective of any subsequent order under any statute allowing such person to withdraw his or her plea of guilty, nolo contendere, or non vult contendere and to enter a plea of not guilty, or setting aside the verdict of guilty or the conviction, or releasing the person from probation, or dismissing the accusation, information, or indictment.

Source: Laws 1976, LB 877, §6; Laws 1978, LB 748, §36; Laws 1986, LB 318, §142; Laws 1988, LB 693, §1; Laws 1988, LB 1100, §21. The changes made by LB 1100 became operative April 8, 1988. The changes made by LB 693 became effective July 9, 1988.

71-161.02. Licensee, certificate holder, or registrant; probation; conditions. The authority of the Director of Regulation and Licensure to discipline a licensee, certificate holder, or registrant by placing him or her on probation pursuant to section 71-155 shall include, but not be limited to, the following:

(1) To require the licensee, certificate holder, or registrant to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;

(2) To require the licensee, certificate holder, or registrant to submit to a complete diagnostic examination by one or more physicians appointed by the director. If the director requires the licensee, certificate holder, or registrant to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians of the licensee's, certificate holder's, or registrant's choice if the licensee, certificate holder, or registrant chooses to make available such a report or reports by his or her physician or physicians; and

(3) To limit the extent, scope, or type of practice of the licensee, certificate holder, or registrant.

Source: Laws 1976, LB 877, §7; Laws 1986, LB 286, §56; Laws 1986, LB 579, §48; Laws 1991, LB 456, §15; Laws 1994, LB 1210, §36; Laws 1996, LB 1044, §388. Operative date January 1, 1997.

71-161.03. Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties. (1) Any petition filed with the Director of Regulation and Licensure pursuant to section 71-150 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate professional board to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board as provided in subsection (1) of this section, the licensee or certificate holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44. Effective date August 28, 1999.

71-161.04. Credential; suspended, revoked, or other limitations; petition for reinstatement; when. (1) A person credentialed by the department whose credential has been suspended or has had limitations placed thereon for any reason specified in sections 71-147 and 71-148 may petition the appropriate professional board to recommend the reinstatement of the credential at any time.

(2) A person credentialed by the department whose credential has been revoked for any reason specified in such sections may petition the board to recommend reinstatement after a period of two years has elapsed from the date of revocation.

Source: Laws 1976, LB 877, § 9; Laws 1986, LB 286, § 57; Laws 1986, LB 579, § 49; Laws 1986, LB 926, § 32; Laws 1988, LB 1100, § 23; Laws 1994, LB 1210, § 37; Laws 1999, LB 828, § 45. Effective date August 28, 1999.

71-161.05. Petition for reinstatement of credential; contents; personal; recommendations. Any petition for reinstatement of a credential after revocation of such credential due to nonpayment of renewal fees or noncompliance with continuing competency requirements or after the imposition of any disciplinary action against such credential shall state such pertinent facts as may be required by the board in rules and regulations adopted and promulgated by the department. The petition shall be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner and two citizens who have personal knowledge of the activities of the petitioner since the credential was revoked or other disciplinary action was imposed.

Source: Laws 1976, LB 877, § 10; Laws 1986, LB 286, § 58; Laws 1986, LB 579, § 50; Laws 1986, LB 926, § 33; Laws 1988, LB 1100, § 24; Laws 1994, LB 1210, § 38; Laws 2002, LB 1021, § 11. Operative date January 1, 2003.

71-161.06. Petition for reinstatement of license, certificate, or registration; when considered and acted upon; hearing; when allowed; procedure. A petition for reinstatement of a license, certificate, or registration shall be considered at the next meeting of the board that is held not earlier than thirty days after the petition was filed. No public hearing need be held on the petition if the board recommends reinstatement of the license, certificate, or registration. Opportunity for a formal public hearing on the petition shall be granted by the board, if formally requested by the petitioner, prior to any recommendation by the board against reinstatement. Any petition for reinstatement accompanied by the requisite information and necessary documents shall be conclusively acted upon by the board within one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board. If the petitioner formally requests opportunity for a formal public hearing thereon or if the board otherwise holds such a hearing, the petitioner shall be given at least thirty days' prior notice thereof by sending a copy of the notice of hearing by means of certified or registered mail directed to the petitioner at his or her last-known residence or business post office address as shown by the files or records of the Department of Health and Human Services Regulation and Licensure or as otherwise known or by means of personal service by being personally served by any sheriff or constable or by any person especially appointed by the board. The hearing may be continued from time to time as the board finds necessary.

Source: Laws 1976, LB 877, §11; Laws 1986, LB 286, §59; Laws 1986, LB 579, §51; Laws 1990, LB 1064, §8; Laws 1994, LB 1210, §39; Laws 1996, LB 1044, §390. Operative date January 1, 1997.

71-161.07. Disciplinary actions; recommendation by professional board; appeal. (1) Each professional board shall make a recommendation to the Director of Regulation and Licensure regarding reinstatement following disciplinary action within the board's profession. In determining whether reinstatement should be recommended, the board (a) may request the

department to investigate the petitioner to determine if the petitioner has committed acts or offenses prohibited by sections 71-147 and 71-148, (b) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and to make available a report or reports thereof to the board, (c) may require the petitioner to pass a written, oral, or practical examination or any combination of such examinations, and (d) may require additional education.

(2) The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to section 71-161.04 when the petitioner has been afforded a hearing or an opportunity for a hearing upon any such petition within a period of two years immediately preceding the filing of such petition.

(3) Denial by the board of the petition for recommendation of reinstatement of the license or certificate may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 12; Laws 1986, LB 286, § 60; Laws 1986, LB 579, § 52; Laws 1988, LB 352, § 114; Laws 1988, LB 1100, § 25; Laws 1991, LB 456, § 17; Laws 1994, LB 1210, § 40; Laws 1996, LB 1044, § 391; Laws 1999, LB 828, § 46. Effective date August 28, 1999.

71-161.08. Repealed. Laws 1988, LB 1100, § 185.

71-161.09. Continuing competency requirements; professional board; rules, regulations, and standards; contents. (1) Each professional board shall establish continuing competency requirements for persons engaged in the active practice of the health care profession or occupation for which the board was designated.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credentialed person of knowledge and skills necessary to competently practice his or her profession or occupation, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) The board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements. The requirements shall be established in rules and regulations approved by the board and adopted and promulgated by the department.

(4)(a) For a profession or occupation for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession or occupation for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(o) of this section which a credentialed person may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

- (a) Continuing education;
- (b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;
- (c) Board certification in a clinical specialty area;
- (d) Professional certification;
- (e) Self-assessment;
- (f) Peer review or evaluation;
- (g) Professional portfolio;
- (h) Practical demonstration;
- (i) Audit;
- (j) Exit interviews with consumers;
- (k) Outcome documentation;
- (l) Testing;
- (m) Refresher courses;
- (n) Inservice training; or
- (o) Any other similar modalities.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12. Operative date January 1, 2003.

71-161.10. Continuing competency requirements; documentation of compliance; noncompliance; effect; exemptions; rules and regulations. (1) Each credentialed person in active practice within the state shall, on or before the date of expiration of his or her credential, complete the requirements to document compliance with continuing competency requirements for his or her profession or occupation as specified by rules and regulations approved by the designated professional board and adopted and promulgated by the department pursuant to section 71-161.09. Except as otherwise provided in this section, the department shall not renew the credential of any person who has not complied with such requirements. Procedures for nonrenewal of the credential due to failure to document compliance with continuing competency requirements shall be identical to those for nonpayment of renewal fees as provided in sections 71-110 and 71-149, as well as procedures for reinstatement of the same. In cases other than nonrenewal, the procedures in sections 71-149 and 71-150 for refusal to renew shall apply. The department, on the recommendation of the designated professional board, may waive continuing competency requirements, in whole or in part, upon submission by a credentialed person of documentation that circumstances beyond his or her control have prevented completion of such requirements. Such circumstances shall include situations in which:

- (a) The credentialed person holds a Nebraska credential but is not practicing his or her profession or occupation in Nebraska;
- (b) The credentialed person has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date;
- (c) The credentialed person has suffered from a serious or disabling illness or physical disability during the credentialing period immediately preceding the renewal date which prevented completion of the continuing competency requirements; and
- (d) The credentialed person was first credentialed within the credentialing period immediately preceding the renewal date.

The department, with the consent of the designated professional board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing competency requirements.

(2) Each credentialed person shall be responsible for maintaining in his or her personal files such certificates or records of continuing competency activities received from approved providers.

The designated professional board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credentialed person selected for audit shall be required to produce documentation of the continuing competency activities listed on his or her renewal application.

Source: Laws 1976, LB 877, § 15; Laws 1985, LB 250, § 5; Laws 1986, LB 286, § 63; Laws 1986, LB 579, § 55; Laws 1986, LB 926, § 34; Laws 1994, LB 1210, § 42; Laws 1997, LB 307, § 120; Laws 1999, LB 828, § 48; Laws 2001, LB 209, § 3; Laws 2002, LB 1021, § 13. Operative date January 1, 2003.

71-161.11. License, permit, certificate, or registration; voluntarily surrendered; voluntary limitation; effect. Any license, permit, certificate, or registration issued by the department pursuant to Chapter 28, article 4, or Chapter 71 may be voluntarily surrendered to the department by the holder permanently, for an indefinite period of time to be restored at the discretion of the department, or for a specific and definite period of time as agreed to between the holder and the department with such license, permit, certificate, or registration to be automatically restored upon the expiration of such period of time. Such former holder shall not engage in any of the practices or activities for which such license, permit, certificate, or registration is required during the period of time for which it has been surrendered, shall be considered as unlicensed during such period of time, and shall not be required to pay any fees during such period of time. Any holder of a license, permit, certificate, or registration issued by the department pursuant to Chapter 28, article 4, or Chapter 71 may agree to a voluntary limitation of such license, permit, certificate, or registration. Such limitation may be placed upon the right of the licensee to practice the profession to such extent, for such time, and under such conditions as agreed to by the director and the licensee. All requirements and procedures relative to the validity of a voluntary limitation of practice statement shall be identical to those outlined in this section for a voluntary surrender statement. Violation of any of the conditions of the voluntary limitation of practice statement by the holder shall be due cause for the refusal of renewal of or the suspension or revocation of the license, permit, certificate, or registration by the department.

Source: Laws 1976, LB 877, § 16; Laws 1986, LB 926, § 35. Effective date April 19, 1986.

71-161.12. License, certificate, or registration; disciplinary actions; additional grounds. In addition to the grounds for denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as otherwise provided by law, a license, certificate, or registration to practice any profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the Director of Regulation and Licensure when the applicant, licensee, certificate holder, or registrant is found to be not qualified to practice the particular profession or occupation for which he or she is applying, licensed, certified, or registered because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability.

Source: Laws 1976, LB 877, § 17; Laws 1986, LB 286, § 64; Laws 1986, LB 579, § 56; Laws 1991, LB 456, § 19; Laws 1996, LB 1044, § 392; Laws 2001, LB 398, § 22. Operative date May 1, 2001.

71-161.13. Complaint alleging dependence or disability; director; investigation; report; review by professional board; finding; effect. When any complaint has been filed with the department by any person or any report has been made to

the Director of Regulation and Licensure by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a credential or a person credentialed to practice any profession or occupation in the state regulated by the department pursuant to Chapter 71 is suffering from habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the Director of Regulation and Licensure shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant or credentialed person to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credentialed person to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the director shall report such finding and evidence supporting it to the appropriate professional board and if such board agrees that reasonable cause exists to question the qualification of such applicant or credentialed person, the board shall appoint a committee of three qualified physicians to examine the applicant or credentialed person and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant or credentialed person, by the director, or by any other person and shall then determine if the applicant or credentialed person is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant or credentialed person to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the credential of the credentialed person to practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23. Operative date May 1, 2001.

71-161.14. Credential; denied or revoked because of physical or mental disability; duration; when issued, returned, or reinstated; manner. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the appropriate professional board finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former credentialed person, or credentialed person is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly credentialed, or for which he or she was credentialed subject to limitation and certifies that fact to the Director of Regulation and Licensure. Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove any limitation on such credential if the person is otherwise qualified as determined by the appropriate professional board to practice or to continue in the practice of the profession or occupation.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50. Effective date August 28, 1999.

71-161.15. Refusal to submit to physical or mental examination; effect. Refusal of an applicant or credentialed person to submit to a physical or mental examination requested by the appropriate professional board pursuant to sections 71-161.12 to 71-161.16 to determine his or her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which he or she is credentialed by the department pursuant to the provisions of Chapter 71 shall be just cause for denial of the application or for refusal of renewal or suspension of his or her credential automatically by the director until such examination has been made.

Source: Laws 1976, LB 877, § 20; Laws 1986, LB 286, § 67; Laws 1986, LB 579, § 59; Laws 1994, LB 1210, § 44; Laws 1996, LB 1044, § 395; Laws 1999, LB 828, § 51. Effective date August 28, 1999.

71-161.16. Disciplinary action; appeal. Any applicant, licensee, certificate holder, or registrant shall have the right to appeal from an order denying, refusing renewal of, limiting, suspending, or revoking a license, certificate, or registration to practice a profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability. Such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24. Operative date May 1, 2001.

71-161.17. Licensee, certificate holder, or registrant; mentally ill; automatic suspension; copy of determination of mental illness; termination of suspension; when. (1) The license, certificate, or registration of any person to practice any profession or occupation licensed, certified, or registered by the Department of Health and Human Services Regulation and Licensure pursuant to the provisions of Chapter 71 shall be suspended automatically if he or she is determined by legal

process to be mentally ill.

(2) A certified copy of the document evidencing that such a licensee, certificate holder, or registrant has been determined by legal process to be mentally ill shall be transmitted to the Director of Regulation and Licensure as soon as possible following such determination.

(3) A suspension under this section may be terminated by the Director of Regulation and Licensure when he or she receives competent evidence that such former practitioner is not or is no longer mentally ill and is otherwise satisfied, with due regard for the public interest, that such former practitioner's license, certificate, or registration to practice may be restored.

Source: Laws 1976, LB 877, § 22; Laws 1986, LB 286, § 69; Laws 1986, LB 579, § 61; Laws 1994, LB 1210, § 45; Laws 1996, LB 1044, § 397. Operative date January 1, 1997.

71-161.18. Licensee, certificate holder, or registrant; physical or mental incapacity; determination; special department consultant; preliminary report. In determining the physical or mental incapacity of any licensee, certificate holder, or registrant to practice his or her profession, the director may, in addition to the other provisions of sections 71-161.01 to 71-161.19, appoint one person of the same profession as such licensee, certificate holder, or registrant as a special department consultant to compile a preliminary report on such licensee, certificate holder, or registrant for the director.

Source: Laws 1976, LB 877, §23; Laws 1986, LB 286, §70; Laws 1986, LB 579, §62; Laws 1991, LB 456, §22. Effective date September 6, 1991.

71-161.19. Professional board; liability; exemption; when. No member of a professional board for any profession or occupation credentialed by the department pursuant to Chapter 71, no expert retained by such board, and no member of such profession or occupation who provides consultation to or testimony for the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board or expert or the consultation or testimony given by such person, if such board member, expert, or person acts without malice and in the reasonable belief that such action, recommendation, consultation, or testimony is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, recommendation is made, or consultation or testimony is provided.

Source: Laws 1976, LB 877, § 24; Laws 1986, LB 286, § 71; Laws 1986, LB 579, § 63; Laws 1996, LB 1044, § 398; Laws 1999, LB 828, § 52. Effective date August 28, 1999.

71-161.20. Reinstatement; application; supporting documents; director; powers and duties. (1) An applicant may apply to the Director of Regulation and Licensure for reinstatement only with an affirmative recommendation of the appropriate professional board, and such application to the director may not be received or filed by the director unless accompanied by (a) the written recommendation of the board, including any finding of fact or order of the board, (b) the application submitted to the board, (c) the record of hearing if any, and (d) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the petitioner.

(2) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (a) in excess of statutory authority, (b) made upon unlawful procedure, (c) unsupported by competent, material, and substantial evidence in view of the entire record, or (d) arbitrary or capricious.

Source: Laws 1991, LB 456, § 18; Laws 1996, LB 1044, § 399; Laws 1999, LB 828, § 53. Effective date August 28, 1999.

(g) FEES

71-162. Credentialing system; administrative costs; how paid. (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or entities seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for the following individuals and entities that provide health services and health-related services:

(a) Individuals in the practice of acupuncture; advanced practice nursing; alcohol and drug counseling; asbestos abatement, inspection, project design, and training; athletic training; audiology; speech-language pathology; chiropractic; dentistry; dental hygiene; environmental health; hearing aid instrument dispensing and fitting; lead-based paint abatement, inspection, project design, and training; medical nutrition therapy; medical radiography; medication aide services; medicine and surgery; mental health practice; nursing; nursing assistant or paid dining assistant services; nursing home administration; occupational therapy; optometry; osteopathic medicine; pharmacy; physical therapy; podiatry; psychology; radon detection, measurement, and mitigation; respiratory care; social work; swimming pool operation; veterinary medicine and surgery; water system operation; constructing or decommissioning water wells and installing water well pumps and pumping equipment; and wholesale drug

distribution; and

(b) Individuals in the practice of and entities in the business of body art; cosmetology; electrology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology.

(2) The department shall determine the cost of the credentialing system for such individuals and entities by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 71-162.01 to 71-162.03.

(3) When fees are to be established pursuant to section 71-162.04 for individuals or entities other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, upon recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be collected as provided in section 71-163.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp., 1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113. Note: The changes made by LB 1005 became operative April 16, 2004. The changes made by LB 1083 became operative July 1, 2004. The changes made by LB 906 became effective July 16, 2004.

71-162.01. Base costs of credentialing. Base costs of credentialing are the costs that are common to all professions and occupations listed in section 71-162 and include the following:

- (1) Salaries and benefits for employees of the department who work with credentialing activities;
 - (2) Shared operating costs for credentialing activities that are not specific to a particular profession or occupation such as indirect costs, rent, and utilities;
 - (3) Costs related to compliance assurance, including investigative costs, contested case costs, and compliance monitoring;
 - (4) Costs of the Licensee Assistance Program under sections 71-172.01 and 71-172.02;
 - (5) Capital costs, including office equipment and computer hardware or software, which are not specific to a particular profession or occupation; and
 - (6) Other reasonable and necessary costs as determined by the department.
- Source: Laws 2003, LB 242, § 24. Operative date July 1, 2004.

71-162.02. Variable costs of credentialing. Variable costs of credentialing are the costs that are unique to a specific profession or occupation listed in section 71-162 and include the following:

- (1) Per diems which are paid to members of the appropriate board;
 - (2) Operating costs that are specific to a particular profession or occupation, including publications, conference registrations, and subscriptions;
 - (3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or occupation, including car rental, gas, and mileage charges but not salaries;
 - (4) Costs to operate and administer the Nebraska Center for Nursing, which costs shall be derived from credentialing fees of registered and practical nurses in accordance with section 71-1798.01; and
 - (5) Other reasonable and necessary costs as determined by the appropriate board or the department.
- Source: Laws 2003, LB 242, § 25; Laws 2005, LB 243, § 1. Effective date March 23, 2005.

71-162.03. Adjustments to the cost of credentialing. Adjustments to the cost of credentialing include, but are not limited to:

- (1) Revenue from sources that include, but are not limited to:
 - (a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;
 - (b) Certification and verification of credentials;
 - (c) Late fees;

- (d) Administrative fees;
 - (e) Reinstatement fees;
 - (f) General Funds and federal funds;
 - (g) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;
 - (h) Gifts; and
 - (i) Grants; and
- (2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 71-1,343.
Source: Laws 2003, LB 242, § 26. Operative date July 1, 2004.

71-162.04. Credentialing fees; establishment and collection. (1) The department, upon recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 71-162, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

- (a) Initial credentials, which include, but are not limited to:
 - (i) Licensure, certification, or registration;
 - (ii) Add-on or specialty credentials;
 - (iii) Temporary, provisional, or training credentials; and
 - (iv) Supervisory or collaborative relationship credentials;
- (b) Applications to renew licenses, certifications, and registrations;
- (c) Approval of continuing education courses and other methods of continuing competency; and
- (d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date and the initial credentialing fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential shall be valid until the next subsequent renewal date.

Source: Laws 2003, LB 242, § 27. Operative date July 1, 2004.

71-162.05. Administrative and other fees; amount. (1) The department shall retain a twenty-five-dollar administrative fee from each credentialing fee established under section 71-162.04 for a denied credential or a withdrawn application, except that (a) if the credentialing fee is less than twenty-five dollars, the fee shall be forfeited and (b) an examination fee shall not be returned.

- (2) The department shall collect fees for services as follows:
 - (a) Ten dollars for a duplicate original or reissued credential;
 - (b) Twenty-five dollars for certification of a credential pursuant to section 71-145;
 - (c) Five dollars for verification of a credential pursuant to section 71-145;

(d) A late fee of twenty-five dollars in addition to the renewal fee to renew a credential (i) within thirty days after the credential's expiration date for professions and occupations listed in section 71-162 other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment and (ii) within sixty days after the credential's expiration date for individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment;

(e) A late fee of thirty-five dollars in addition to the renewal fee to reinstate a credential for professions and occupations specified in section 71-102 or regulated under the Nebraska Cosmetology Act, the Occupational Therapy Practice Act, or sections 71-4701 to 71-4719 or 71-6053 to 71-6068 not more than one year after the date of revocation for failure to meet the renewal requirements;

(f) A late fee of seventy-five dollars in addition to the renewal fee to reinstate a credential for professions and occupations specified in section 71-102 or regulated under the Nebraska Cosmetology Act, the Occupational Therapy Practice Act, or sections 71-4701 to 71-4719 or 71-6053 to 71-6068 more than one year after the date of revocation for failure to meet the renewal requirements; and

- (g) Twenty-five dollars for placing a credential on inactive status.

Source: Laws 2003, LB 242, § 28. Operative date July 1, 2004.

71-163. Professional and Occupational Credentialing Cash Fund; created; use; investment. (1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in sections 71-172.02 and 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 71-162 to 71-162.05.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and entities listed in section 71-162 except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1927, c. 167, §62, p. 471; C.S.1929, §71-702; R.S.1943, §71-163; Laws 1986, LB 926, §37; Laws 1988, LB 1100, §27; Laws 1994, LB 1210, §47; Laws 2003, LB 242, §30; Laws 2005, LB 146, §10. Effective date September 4, 2005.

(h) VIOLATIONS, CRIMES, PUNISHMENT

71-164. Practicing profession without license, certificate, or registration; injunction. Any person engaging in the practice of any profession, for which a license, certificate, or registration is required by the Uniform Licensing Law, without such license, certificate, or registration may be restrained by temporary and permanent injunctions.

Source: Laws 1927, c. 167, §63, p. 471; C.S. 1929, §71-801; Laws 1943, c. 150, §17, p. 546; R.S. 1943, §71-164; Laws 1994, LB 1210, §48. Operative date July 16, 1994.

71-164.01. Practicing without being credentialed; administrative penalty; procedure. (1) The department may assess an administrative penalty of ten dollars per day for each day that evidence exists of practice prior to issuance, renewal after expiration, or reinstatement of a credential of an individual or entity listed in section 71-162. The total penalty shall not exceed one thousand dollars.

(2) It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

- (a) The person admits to engaging in practice;
- (b) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
- (c) Billing or payment records document the provision of service, care, or treatment by the person;
- (d) Service, care, or treatment records document the provision of service, care, or treatment by the person;
- (e) Appointment records indicate that the person was engaged in practice;
- (f) Water well registrations or other government records indicate that the person was engaged in practice; and
- (g) The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

(3) When the department assesses an administrative penalty, the department shall provide written notice of the assessment to the person. The notice shall be delivered in the manner prescribed by the department and shall include notice of the opportunity for a hearing.

(4) The department shall, within thirty days after receipt, transmit an administrative penalty to the State Treasurer for credit to the permanent school fund. An administrative penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2003, LB 242, § 29. Operative date July 1, 2004.

71-165. Filing false documents with department; forgery; penalty. Any person who shall file, or attempt to file, with the Department of Health and Human Services Regulation and Licensure any false or forged diploma or certificate, or affidavit of identification or qualification, shall be deemed guilty of forgery, and upon conviction thereof shall be punished according to the penalties imposed in the statutes relating to that subject.

Source: Laws 1927, c. 167, §64, p. 471; C.S. 1929, §71-802; R.S. 1943, §71-165; Laws 1996, LB 1044, §400. Operative date January 1, 1997.

71-166. False impersonation; fraud; aiding and abetting; penalty. Any person who presents to the department a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license, certificate, or registration, who falsely impersonates anyone to whom a license, certificate, or registration has been issued by the department, who falsely holds himself or herself out to be a person licensed, certified, or registered by the department, or who aids and abets another who is not licensed, certified, or registered to practice that profession in practicing a licensed, certified, or registered profession shall be guilty of a Class IV felony.

Source: Laws 1927, c. 167, §65, p. 471; C.S. 1929, §71-803; R.S. 1943, §71-166; Laws 1977, LB 39, §141; Laws 1986, LB 286, §73; Laws 1986, LB 579, §65; Laws 1986, LB 926, §38; Laws 1994, LB 1210, §49. Operative date July 16, 1994.

71-167. General violations; penalty; second offenses; penalty. Any person violating any of the provisions of the Uniform Licensing Law, except as specific penalties are herein otherwise imposed, shall be guilty of a Class III misdemeanor. Any person for a second violation of any of the provisions of this act wherein another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1927, c. 167, §66, p. 471; C.S. 1929, §71-804; R.S. 1943, §71-167; Laws 1977, LB 39, §142. Operative date January 1, 1979.

(i) ENFORCEMENT PROVISIONS

71-168. Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit in which the patient releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report submitted by a professional liability insurance company on behalf of a credentialed person shall be sufficient to satisfy the credentialed person's reporting requirement under subsection (4) of this section.

(6) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under the Patient Safety Improvement Act and sections 25-12, 123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Source: Laws 1927, c. 167, §67, p. 472; C.S.1929, §71-901; R.S.1943, §71-168; Laws 1986, LB 286, §74; Laws 1986, LB 579, §66; Laws 1991, LB 456, §23; Laws 1994, LB 1210, §50; Laws 1994, LB 1223, §10; Laws 1995, LB 563, §2; Laws 1996, LB 414, §1; Laws 1997, LB 138, §42; Laws 1997, LB 222, §4; Laws 1999, LB 828, §55; Laws 2000, LB 1115, §12; Laws 2005, LB 256, §21; Laws 2005, LB 306, §3; Laws 2005, LB 361, §32; Laws 2005, LB 382, §5. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 382 became operative May 7, 2005. The changes made by LB 306 became effective September 4, 2005. The changes made by LB 256 became operative July 1, 2007.

71-168.01. Complaint; department; powers and duties; investigation; notices; professional board; recommendation; review by Attorney General; when; confidentiality; immunity; violation; penalty. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Licensing Law or rules and regulations issued under such law. The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

- (a) Whether the complaint pertains to a matter within the authority of the department to enforce;
- (b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;
- (c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;
- (d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or
- (e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate professional board may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(3) A professional board may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

(4) The department may notify the credentialed person that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

(5) The department shall advise the appropriate professional board on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board. When the department determines that an investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the credentialed person that may be relevant to the investigation, except that reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release to the board and reports provided by any other agency or public or private entity, which reports are confidential in that agency's or entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review. The recommendation of the board shall be made part of the completed investigational report of the department and submitted to the Attorney General. The recommendation of the board shall include, but not be limited to:

- (a) The specific violations of statute, regulation, or both that the board finds substantiated based upon the investigation;
- (b) Matters which the board believes require additional investigation; and

(c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(6) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(7) Complaints or investigational records of the department shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such complaints or records shall be a public record if made part of the record of a contested case before the department. No person, including, but not limited to, department employees and members of a professional board, having access to such complaints or investigational records shall disclose such information in violation of this section, except that the department may exchange such information with law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the department's duties and only under circumstances to ensure against unauthorized access to such information. Violation of this subsection is a Class I misdemeanor.

(8) All meetings of the professional boards or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56. Effective date August 28, 1999.

71-168.02. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a health care profession regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or

(b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Source: Laws 1994, LB 1223, §12; Laws 1995, LB 563, §3; Laws 1996, LB 414, §2; Laws 1997, LB 138, §43; Laws 1997, LB 222, §5; Laws 2000, LB 819, §84; Laws 2000, LB 1115, §13; Laws 2005, LB 256, §22; Laws 2005, LB 361, §33. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 256 became operative July 1, 2007.

71-169. Rules and regulations; department; adopt. The Department of Health and Human Services Regulation and Licensure shall promulgate necessary rules and regulations and forms for carrying out the provisions of the Uniform Licensing Law. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent therewith.

Source: Laws 1927, c. 167, §68, p. 472; C.S. 1929, §71-902; R.S. 1943, §71-169; Laws 1996, LB 1044, §401. Operative date January 1, 1997.

71-170. Statutes and rules; printing; duty of department. The department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published: (1) The law regulating the practice of the profession; (2) the rules of the department relative to credentials; and (3) the rules relating to examinations adopted by the department on the recommendation of the professional board.

Source: Laws 1927, c. 167, § 69, p. 472; C.S. 1929, § 71-903; R.S. 1943, § 71-170; Laws 1986, LB 286, § 75; Laws 1986, LB 579, § 67; Laws 1994, LB 1210, § 51; Laws 1996, LB 1044, § 402; Laws 1999, LB 828, § 57. Effective date August 28, 1999.

71-171. Violations; prosecution; duty of Attorney General and county attorney. Upon the request of the department, the Attorney General shall institute in the name of the state the proper civil or criminal proceedings against any person regarding whom a complaint has been made, charging him or her with violation of any of the provisions of the Uniform Licensing Law, and the county attorney, at the request of the Attorney General or of the department, shall appear and prosecute such action when brought in his or her county.

Source: Laws 1927, c. 167, § 70, p. 472; C.S. 1929, § 71-904; Laws 1991, LB 456, § 24. Effective date September 6, 1991.

71-171.01. Violations; department; Attorney General; powers and duties. The department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by the credentialed person. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credentialed person has violated and the appropriate legal action to take. The Attorney General may: (1) Elect to file a petition under section 71-150 or not to file a petition; (2) negotiate a voluntary surrender or voluntary limitation pursuant to section 71-161.11; or (3) in cases involving a technical or insubstantial violation, refer the matter to the appropriate professional board for the opportunity to resolve the matter by issuance of a letter of concern or to recommend to the Attorney General that he or she enter into an assurance of compliance with the credentialed person in lieu of filing a petition. Neither a letter of concern nor an assurance of compliance shall constitute discipline against a credentialed person.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58. Effective date August 28, 1999.

71-171.02. Referral to professional board; letter of concern; assurance of compliance; recommendation. Upon referral of a matter under section 71-171.01 by the Attorney General, the professional board may:

(1) Send to the credentialed person a letter of concern, approved by the Attorney General, which includes a statement of the statute, rule, or regulation in question and a statement advising the credentialed person of the conduct that would violate such statute, rule, or regulation. Such letter shall be signed by the board and shall become a part of the public record of the credentialed person;

(2) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the credentialed person to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the credentialed person that he or she will not engage in such conduct, and acknowledgment by the credentialed person that violation of the assurance constitutes unprofessional conduct as provided by subdivision (17) of section 71-148. Such assurance shall be signed by the credentialed person and shall become a part of the public record of the credentialed person. The credentialed person shall not be required to admit to any violation of the law and the assurance shall not be construed as such an admission; or

(3) Recommend that the Attorney General file a petition under section 71-150.

Source: Laws 1991, LB 456, § 26; Laws 1994, LB 1210, § 53; Laws 1997, LB 23, § 7; Laws 1999, LB 828, § 59. Effective date August 28, 1999.

71-172. Practice of profession; evidence of. The opening of an office for the practice of any profession for which a license, certificate, or registration is required by the Uniform Licensing Law, the announcing to the public in any way the intention to practice such profession, the use of any professional degree or designation, or any sign, card, circular, device, or advertisement, as a practitioner of any such profession or as a person skilled in the same, shall be prima facie evidence of engaging in such profession.

Source: Laws 1927, c. 167, § 71, p. 473; C.S. 1929, § 71-905; R.S. 1943, § 71-172; Laws 1994, LB 1210, § 54. Operative date July 16, 1994.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01. Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation.

(1) The Department of Health and Human Services Regulation and Licensure may contract with the Department of Health and Human Services to provide a Licensee Assistance Program to credential holders regulated by the Department of Health

and Human Services Regulation and Licensure. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment of habitual intoxication or dependence and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the intoxication or dependence may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the Director of Regulation and Licensure.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person. Any report from any person or from the program to the Department of Health and Human Services Regulation and Licensure indicating that a credential holder is suffering from habitual intoxication or dependence shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 71-150 to 71-155.

(3) No person who makes a report of intoxication or dependence to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(4) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for habitual intoxication or dependence shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from habitual intoxication or dependence or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31. Operative date July 1, 2004.

71-172.02. Fee; Licensee Assistance Cash Fund; created; use; investment. The Department of Health and Human Services Regulation and Licensure shall charge a fee of one dollar per year, in addition to any other fee, for each credential. Such fee shall be collected at the time of issuance or renewal and shall be remitted to the State Treasurer for credit to the Licensee Assistance Cash Fund, which fund is hereby created. Money in the fund shall be used to carry out section 71-172.01. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 456, § 9; Laws 1994, LB 1066, § 65; Laws 1996, LB 1044, § 404; Laws 2003, LB 242, § 32. Operative date July 1, 2004.

(v) INSURER REPORT VIOLATIONS

71-1,198. Terms, defined. For purposes of sections 71-1,198 to 71-1,205, unless the context otherwise requires:

(1) Law enforcement agency means any governmental agency charged by law with carrying out any of the regulatory provisions or any person authorized by law to make arrests within the State of Nebraska;

(2) Practitioner means any person required to be licensed, certified, or registered under the regulatory provisions, whether or not such person is so licensed, certified, or registered; and

(3) Regulatory provisions means the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068.

Source: Laws 1982, LB 421, § 1; Laws 1994, LB 1223, § 19; Laws 1995, LB 563, § 38; Laws 1996, LB 414, § 9; Laws 1997, LB 138, § 44; Laws 2000, LB 1115, § 23; Laws 2005, LB 256, § 31. Operative date July 1, 2007.

71-1,199. Insurer; report violation to department; when. Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations:

(1) Any insurer having knowledge of any violation of any of the regulatory provisions governing the profession of the practitioner being reported shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any practitioner.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133. Effective date August 28, 1999.

71-1,200. Insurer; report to department; when required. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the practitioner and patient, when the insurer:

(1) Has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of such practitioner;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a practitioner, including settlements made prior to suit, arising out of the acts or omissions of the practitioner;

(3) Takes an adverse action affecting the coverage provided by the insurer to a practitioner due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action shall not include raising a practitioner's rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

The report shall be made within thirty days after the date of the action, event, or request. Nothing in this section or section 71-1,199 shall be construed to require an insurer to report based on information gained due to the filing by a practitioner or on behalf of a practitioner of a claim for payment under his or her health insurance policy.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93. Operative date January 1, 2001.

71-1,201. Insurer; failure to make report; penalty. Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 71-1,199 or 71-1,200 within a reasonable time is guilty of a Class IV misdemeanor, unless such insurer has reported the required facts to a law enforcement agency.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135. Effective date August 28, 1999.

71-1,202. Reports; disclosure restricted. To the extent that such reports contain or relate to privileged communications between patient and practitioner, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the patient involved or the reports are made part of the record in a contested case under section 71-154, in which case such reports shall only be disclosed to the extent they are made a part of such record.

Source: Laws 1982, LB 421, § 5; Laws 1991, LB 456, § 31; Laws 1994, LB 1223, § 22. Operative date April 16, 1994.

71-1,203. Reports; subject to Uniform Licensing Law. Any reports made to the department pursuant to the requirements of section 71-1,199 or 71-1,200 shall be subject to the investigatory and enforcement provisions of the Uniform Licensing Law.

Source: Laws 1982, LB 421, § 6. Effective date July 17, 1982.

71-1,204. Insurer; immunity from liability. Any insurer or employee of an insurer making a report as required by section 71-1,199 or 71-1,200 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between patient and physician or between client and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, § 7; Laws 1993, LB 130, § 5; Laws 1994, LB 1223, § 23. Operative date April 16, 1994.

71-1,205. Reports; violation of practitioner-patient privilege; not required. Nothing contained in sections 71-1,198 to 71-1,205 shall be construed so as to require any practitioner to violate a practitioner-patient privilege.

Source: Laws 1982, LB 421, § 8. Effective date July 17, 1982.

(ee) REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

71-1,339. Clerk of county or district court; report convictions and judgments of licensees, certificate holders, and registrants; Attorney General or prosecutor; duty. The clerk of any county or district court in this state shall report to the Department of Health and Human Services Regulation and Licensure the conviction of any person licensed, certified, or registered by the department under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the

Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee, certificate holder, or registrant arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the licensure, certification, or registration of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Regulation and Licensure and the State Court Administrator.

Source: Laws 1994, LB 1223, §24; Laws 1995, LB 563, §39; Laws 1996, LB 414, §10; Laws 1996, LB 1044, §480; Laws 1997, LB 138, §45; Laws 2000, LB 1115, §24; Laws 2005, LB 256, §32. Operative date July 1, 2007.

(ff) HEALTH CARE CREDENTIALING

71-1,340. Legislative findings and intent. The Legislature finds that the need to protect public health and safety requires the regulation of health professions and occupations and health care facilities and providers. A system is in place in this state to provide this regulation, but over time problems have arisen with the system, including internal inconsistencies, unnecessary complexity, and the inability to quickly change to meet technical and medical advances.

It is the intent of the Legislature that a study be conducted for the purpose of designing a system which protects the health and safety of the citizens of this state without overregulation, is streamlined and adaptable to a changing environment, and is cost effective.

Source: Laws 1997, LB 183, §1. Effective date March 14, 1997.

71-1,341. Terms, defined. For purposes of sections 71-1,340 to 71-1,342:

(1) Credentialing means the grant of authority or approval by the state to health care practitioners, facilities, and providers who provide health care or related services through licensure, certification, registration, approval of provider status, enrollment in a program for reimbursement, and other similar activities;

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Director means the Director of Regulation and Licensure;

(4) Facility means a health care facility or health care service licensed under the Health Care Facility Licensure Act to provide health care;

(5) Health care practitioner means an individual licensed, certified, or otherwise authorized by law to administer health care in the course of professional practice; and

(6) Provider means a person providing health care services under an agreement with the state and its contractors for payment for those services.

Source: Laws 1997, LB 183, § 2; Laws 2000, LB 819, § 94. Operative date January 1, 2001.

71-1,342. Study; model credentialing process; recommendations. The director shall conduct a comprehensive study which evaluates the current credentialing system and develops a model credentialing process for Nebraska. The study shall evaluate the logic for state credentialing, the systems and processes through which credentialing is regulated by state government, and the decisionmaking processes for regulatory policy. The model credentialing process shall contain a clear statement of policy regarding the role of state government in credentialing health care practitioners, facilities, and providers and shall be used to evaluate and streamline Nebraska's current credentialing systems and processes as well as future proposals for credentialing.

Recommendations related to streamlining the credentialing system and streamlining administrative processing of credentialing for health care facilities and providers shall be available for legislative action by January 1, 1998. Recommendations related to the laws regulating individual professions and occupations shall be available for legislative action by January 1, 1999.

Source: Laws 1997, LB 183, §3. Effective date March 14, 1997.

71-1,343. Legislative intent; department review of credentialed professions. (1) It is the intent of the Legislature that quality health care services and human services be provided to all citizens of the state and basic standards be developed to protect the public health and safety and that professions be regulated by the state only when it is demonstrated that such regulation is in the best interests of the public.

(2) The department shall periodically review each credentialed profession to determine if continued credentialing is needed to protect the public.

Source: Laws 1999, LB 828, § 8. Effective date August 28, 1999.